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THE
COMPANIES ACT
1948

THE COMPANIES ACT 1948

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PREFACE

Towards the end of last year, the authors, with some diffidence, attempted the difficult task of exploring, so far as they were able, the uncharted territory of the Companies Act, 1947, which amended the Act of 1929 in accordance with the main recommendations of the Cohen Committee. They have been considerably gratified at the reception which was accorded to their book on that Act, and have been encouraged by that reception to undertake the equally arduous task of annotating the consolidation Act of 1948. The territory of the changes incorporated in that Act is still unexplored and will remain so until the Courts have had an opportunity of deciding the questions there raised, but the authors have had the advantage of the discussions which these new provisions have aroused since the publication of their last work and the opinions of those in the legal and accountancy professions and others whose opinions are deserving of the greatest consideration. It is hoped, therefore, that the present work will be found of service to all who are concerned with the manifold aspects of the law relating to companies.

Considerations of space have, to a large extent, determined the general nature of the scheme of the work, and it has been thought preferable to confine annotations to concise notes to the sections and to cite only the more important cases, and in particular, those which establish a principle. It may be that such condensation will be considered an advantage rather than otherwise. As to the new provisions, the authors have felt that, while they call for rather more detailed treatment than do those which merely reproduce the provisions of the 1929 Act, the reader will require in this work the more important aspects of those provisions to be brought to his notice. A fuller treatment of these provisions will be found in the authors' book on the 1947 Act. Thus this book is a guide rather than an exhaustive treatise and the complete exposition of statute and case law is left to larger works, such as Lord Wrenbury's book, "Buckley on the Companies Acts," a new edition of which is, it is understood, being prepared.

The residue of the 1947 Act which has remained after consolidation has been included, while the relevant portions of the Registration of Business Names Act, 1910, as amended, and of the Business Names Rules and forms are similarly dealt with. The forms of accounts given in Appendix II are intended to supplement those given in Appendix A of the book on the 1947 Act. It has also been thought that the text of the Winding-up Rules, together with some indications of the changes which may be expected in those Rules, will be found helpful, especially since it is possible that some time may elapse before amending Rules are available. Finally, the comparative tables in Appendix I, showing the correspondence between the 1929 and 1948 Acts and the 1947 and 1948 Acts respectively, should afford assistance in tracing the whereabouts in the present Act of those provisions in the earlier Acts which have, by now, become so familiar to practitioners.

I, ESSEX COURT,
TEMPLE, E.C.4.

S. W. M.
M. E.

July, 1948

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INTRODUCTION

I.—THE BACKGROUND TO THE ACT

The joint-stock company as it exists to-day is of relatively recent growth and owes its development to the evolution of trade and industry from the small one-man business or partnership to the large-scale corporation drawing its support (and funds) from all classes of the community.

The earliest form of trading company was the chartered company. Notable examples of such were the East India Company, the Levant Company, the Hudson's Bay Company, the Royal African Company and the South Sea Company (of "bubble" fame). These companies were incorporated by charters of incorporation granted by the Crown, and such charters were given as early as the sixteenth century. The main objections to incorporation by charter were, however, that it was very costly, that no enterprise, however promising, could be sure of obtaining a charter, and the members of the company were not liable for the company's debts.

To avoid the delay and expense of incorporation by charter or by Act of Parliament, the partnership basis of trading was enlarged and what amounted to very large partnerships were formed although they are often referred to as "common law companies". These associations were usually governed by a deed setting out the constitution of the concern and providing for the division of capital into shares and for the transfer of those shares. Nevertheless, they remained partnerships, with unlimited liability. Associations of this kind multiplied during the eighteenth century and a mania of speculation set in. To offset this, the Bubble Companies Act, 1719, was passed. It was not very effective and was repealed by the Bubble Companies Act, 1825, which restored the common law position. The latter Act, however, introduced the principle of limited liability in the case of chartered companies, and the Chartered Companies Act, 1837 (2 Halsbury's Statutes 634), empowered the Crown to grant letters patent to a body of persons associated together for trading purposes.

Every such company had to be formed by a deed of partnership or association, or an agreement in writing of that nature, by which the undertaking was divided into a specified number of shares. The deed or agreement, or some schedule thereto, had to set forth the name or style of the company, of its members, the date of its commencement, its objects and the principal place for carrying on its business. It also had to contain the appointment of two or more of its officers to sue or be sued on its behalf in the manner mentioned in the Act (a). The company was not, however, a body corporate.

Statutory incorporation of companies.—The first Act to make provision for the incorporation and registration of companies without the necessity of a Royal Charter or special Act of Parliament, was the Companies Act, 1844. This Act was succeeded by further Acts of 1855, 1856, 1857 and 1858. These statutes were all repealed by the Companies Act, 1862, which until April 1, 1909, governed all companies registered after November 2, 1862, and put company law on its modern footing, establishing the principle of liability limited by shares and by guarantee.

Public Companies.—The Companies Act, 1862, permitted registration thereunder of every then existing company (including those registered under the Joint Stock Companies Acts) which consisted of seven or more members, and any company thereafter formed in pursuance of any Act (except the Act of 1862) or letters patent or being a company working mines within and subject to the stannaries jurisdiction, or being otherwise duly constituted by law, and consisting of seven or more members. Any other new company, association, or partnership had to be registered under the Act, if it consisted of more than 20 persons (or ten in the case of a banking company).

As a result of the privileges with regard to limited liability granted under the Act of 1862, the basis of capital investment under the joint stock system was

(a) A detailed treatment of the Act is contained in 5 Halsbury's Laws (2nd edn.), pp. 834 *et seq.*

considerably broadened and statistics for the period showed that many new companies were formed, mainly of the large-scale enterprise type. It is interesting to note that companies registered under the Act of 1862, although they were required to file their memorandum and articles, annual balance sheet and list of shareholders, were not required to pay duty on authorised capital (this was remedied by the Act of 1891), and consequently the published statistics of capital flotations for that period were not really indicative of the actual capital invested. As the facilities for public incorporation were available to any business, there developed as a result a type of limited company known as the "one man company", so described in common parlance because the majority of the shares were held by one person, the remaining six shares being held singly by other members (the minimum number of members required under this Act being seven). This type of company was relatively small, but nevertheless increased in number, and it was not until the Companies Act, 1907, and the Companies (Consolidation) Act, 1908, were passed that legal recognition was given to the small type of company with a limited number of members, termed under the 1907 Act a "private company".

The Act of 1862 was amended by various other statutes, notably the Companies (Winding-up) Act, 1890; the Directors Liability Act, 1890; and the Companies Acts of 1898, 1900 and 1907, and was with these statutes repealed by the Companies (Consolidation) Act, 1908, which incorporated most of their provisions.

Private Companies.—The Companies Act, 1907, which created the private company, exempted such company from including the balance sheet in the annual return filed with the registrar, and also imposed certain conditions as to membership and restrictions on transfer, and public subscription for its shares was forbidden. It was, however, subject to the same conditions as a "public company" as to the filing of a copy of its memorandum and articles at Somerset House. One of the consequences which followed legal recognition of the private company was the development of trading by means of subsidiary companies.

Under this system, if the subsidiary were a private company, the law imposed no obligation on the holding company to give their shareholders information as to the financial position or trading results of the subsidiary, while if the subsidiary were a public company, the published accounts need not be combined with those of the holding company.

The Companies Act, 1929.—The Companies (Consolidation) Act, 1908, was amended by the Companies Act, 1913, the Companies (Particulars of Directors) Act, 1917, and the Companies Act, 1928. The Companies Act, 1929 (2 Halsbury's Statutes 775), which came into operation on November 1, 1929, repealed those Acts and certain other enactments. It was primarily a codifying Act but incorporated substantial innovations made in the law relating to companies by the Act of 1928. The more important changes effected by that Act included:—

- (i) *Memorandum.*—power to a company to alter the provisions of its memorandum with respect to its objects and provisions that such alterations should not be binding on members in certain conditions;
- (ii) *Prospectus.*—provisions as to matters to be stated therein;
- (iii) *Commissions and discounts.*—conditions as to the payment thereof;
- (iv) *Capital.*—prohibition of financial assistance by a company for purchase of its own shares, power to issue redeemable preference shares, power to issue shares at a discount, power to pay interest out of capital in certain cases, reduction of share capital;
- (v) *Debentures.*—power to re-issue debentures paid off by a company on certain conditions;
- (vi) *Directors.*—particulars as to loans and remuneration to be stated in accounts and certain provisions as to minimum number of directors in the case of public companies;
- (vii) *Annual Return.*—certain requirements as regards the annual return, and penalties for non-compliance with such requirements;
- (viii) *Annual Accounts.*—provisions as to balance sheet and profit and loss account, form and contents thereof;
- (ix) *Holding companies.*—meaning of, provisions requiring disclosure of subsidiary interests in which a company holds investments, or where a holding company is indebted to a subsidiary company, disclosure as to the amount of that indebtedness;

- (x) *Books of account.*—provisions as to the keeping thereof ;
- (xi) *Auditors.*—appointment and remuneration, disqualification for appointment, right of access to books and right to attend general meetings ;
- (xii) *Inspection.*—powers of the Board of Trade to investigate the affairs of a company, and power of a company to appoint inspectors to investigate its affairs.

Defects of the Companies Act, 1929.—Experience of the working of the 1929 Act had drawn public attention particularly to the following aspects :—

(a) *Prospectuses.*—The heavy losses which investors, many of whom subscribed for their shares on unsatisfactory prospectuses, suffered in the slump which followed the 1928/9 boom, caused a feeling that the law relating to prospectuses was inadequate (neither the Companies Act nor the revised London Stock Exchange rules governing the grant of official quotations and permission to deal had come into force in time to effect the prospectuses in question).

(b) *Private Companies.*—The question had arisen whether the exemption of private companies to file accounts with the registrar of companies should be allowed to continue.

(c) *Nominee Shareholders.*—The belief that such holdings were being used to conceal the seat of control or for dubious purposes had led to a demand that the real ownership should be disclosed.

(d) *Accounts.*—It was thought that the then legal requirements as to the contents of accounts to be presented to shareholders were too meagre. The practice of showing a number of diverse items in one lump sum and thereby obscuring the real position as to the assets and liabilities and as to the results of trading, made it difficult and often impossible for a shareholder to form a true view of the financial position and earnings of the company in which he was interested. While auditors had tended to press for standards in advance of the legal requirements, it had been suggested that their hands would be strengthened if the law were to accord more nearly with what they regarded as the best practice.

(e) *Control.*—The control theoretically exercised by shareholders over directors was illusory and had been accentuated by the dispersion of capital among an increasing number of small shareholders who paid little attention to their investments so long as satisfactory dividends were forthcoming, and lacked sufficient time, money, and experience to make full use of their rights as occasion arose, and who were in many cases too numerous and too widely dispersed to be able to organise themselves (see the Cohen Report, paragraph 7).

The Cohen Report.—It was with a view to closing the gaps so revealed in the 1929 Act that on June 26, 1943, the President of the Board of Trade appointed a Committee under the chairmanship of Mr. Justice Cohen (as he then was) whose terms of reference were "to consider and report what major amendments are desirable in the Companies Act, 1929, and in particular, to review the requirements prescribed in regard to the formation and affairs of companies and the safeguards afforded for investors and for the public interest." The Committee presented its report on June 11, 1945 (Cmd. 6659) (a).

Companies Act, 1947.—Following on the Cohen Report, the Companies Act, 1947 (b), which received the Royal Assent on August 6, 1947, amended the 1929 Act, mainly on the lines of the recommendations contained in that Report. Certain provisions of that Act came into force on December 1, 1947 (see the Companies Act (Commencement) Order, 1947 (S.R. & O. 1947 No. 2503)). The remainder of the Act, except for section 120 (2), which came into force on March 1, 1948, was brought into force on July 1, 1948, by the Companies Act, 1947 (Commencement) Order, 1948 (S.I. 1948 No. 439). It was immediately superseded and repealed by the 1948 Act, Seventeenth Schedule, Part I, except for certain enactments which amended Acts other than the Companies Act, 1929, which remain in force independently and are reproduced on pp. 448 *et seq.*, *post*. The amendments made in the first and sixth Schedules of the 1929 Act by S.I. 1948 Nos. 434 and 586 are now incorporated in the 1948 Act ; see p. xlii, *post*.

(a) A comprehensive summary of the Cohen Report and its recommendations is given in Magnus and Estrin on the Companies Act, 1947, pp. 3 *et seq.*

(b) For a detailed treatment and full annotation of the 1947 Act, see Magnus and Estrin on the Companies Act, 1947.

II.—THE COMPANIES ACT, 1948

The present Act is a consolidation Act, and consolidates all the existing company law, viz. the Companies Act, 1929, as amended by subsequent enactments, and the Companies Act, 1947. It consists of thirteen Parts and eighteen Schedules, and received the Royal Assent on June 30, 1948, coming into force on July 1, 1948.

The remainder of this Introduction summarises the main changes introduced into this Act as compared with the Act of 1929, omitting only those of a purely incidental nature (a).

PART I.—INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO (Sections 1–36)

The changes embodied in the 1947 Act and incorporated here simplify procedure where a company wishes to alter its objects, tighten up the law as regards the names of companies and incorporate other minor matters incidental to the constitution of a company.

Alteration of memorandum.—A company may now alter its objects by special resolution without confirmation by the Court. If, however, an application to the Court is made by a certain proportion of the members or debenture holders, the alteration will have effect only so far as it is confirmed by the Court. The procedure and the powers of the Court are set out in section 5. A similar provision is made by section 23, as regards the alteration of any condition contained in the memorandum which could lawfully be contained in the articles, except in cases where the memorandum itself provides for or prohibits the alteration of all or any of those conditions. The section does not authorise any variation or abrogation of the special rights of any class of members.

Fees on registration.—Certain alterations are made in the fees payable on registration of a company, principally concerning companies limited by guarantee and unlimited companies having a share capital, who will have to pay fees comparable with similar companies which have no share capital, where these fees are higher. Similar provision is also made in the case of registration of an increase in share capital or membership (section 7, Twelfth Schedule).

Prohibition of registration of companies by undesirable names.—The Board of Trade is given wider powers to veto the use by a company of a particular name and a company may not now be registered by a name which in the Board of Trade's opinion is undesirable (section 17). Where a company, by inadvertence or otherwise, has been allowed to register by a name which is too like that of an existing company, it may itself change that name or may be compelled by the Board of Trade to do so (section 18 (2)). Similarly, a company not formed under the Act which seeks to be registered thereunder may be required to change its name as a condition of registration if the Board of Trade considers that its present name is undesirable (section 388). As the choice of name is largely a matter for the Board of Trade's discretion, the specific provisions in section 17 of the 1929 Act as to the use of particular phrases in a company's name have not been here re-enacted.

Licence to omit "Limited".—The provisions of section 18 of the 1929 Act as regards charitable and other companies not formed for profit are extended and the Board of Trade may now by licence authorise a company to make a change in its name by special resolution including or consisting of the omission of the word "Limited", where the Board of Trade is satisfied that the company's objects are restricted to those set out in the section and to objects incidental or conducive thereto and the company is required by its constitution to apply any profits or other income in promoting its objects and is prohibited from paying any dividend to its members (section 19).

Membership of holding company.—Except in the case of a company which is already a member of its holding company, no company or its nominee may be a member of its holding company and an allotment or transfer of shares by a company to its subsidiary is void. An exception is made in the case of a subsidiary which is acting as personal representative or trustee, provided that the holding company or the subsidiary is not beneficially interested otherwise

(a) The changes here noted were in the main effected by the 1947 Act; the present Act reproduces what is really existing law.

than by way of security in certain cases. Where a company is already a member of its holding company, unless its membership is as personal representative or trustee, it will have no voting rights at meetings of the holding company s. 27).

Documents of and relating to Scottish companies.—In the case of Scottish companies, a deed to which the company is a party is validly executed according to Scottish law, if it is sealed with the common seal and subscribed by two directors or by a director and the secretary (section 32 (4)).

PART II.—SHARE CAPITAL AND DEBENTURES (Sections 37–94)

The changes made by the 1947 Act and contained in these sections strengthen the law with regard to prospectuses, allotments and offers for sale and the issue of shares and debentures generally. In particular, they seek to give the public longer time to digest the contents of the prospectuses by providing an interval between the issue of the prospectus and allotments; check the operation of “stags” by making applications for shares irrevocable for a certain period; safeguard intending investors from being misled by a statement that permission to deal is being sought by providing that application should be made within a fixed time, and for the return of allotment moneys in the event of a refusal; make experts responsible for statements by them in the prospectus and tighten up provisions as to “placings”.

Prospectus

Facts to be stated in prospectus to which section 38 applies.—

A prospectus issued generally need no longer include the company's memorandum or the other particulars specified in paragraph 1 of Part I of the Fourth Schedule to the 1929 Act, but must include the following particulars:—

(a) the time of the opening of the subscription lists; (b) the number, description and amount of any shares or debentures which any person has, or is entitled to, an option to subscribe for, together with certain particulars of the option; (c) short particulars of any transaction relating to any property purchased or acquired, or proposed to be purchased or acquired, which was completed within the two preceding years in which any vendor of the property or any person who is, or was at the time of the transaction, a promoter or director or proposed director had any interest direct or indirect; (d) the amount or estimated amount of the expenses of the issue and the person by whom any preliminary expenses or any expenses of the issue have been paid or are payable; (e) any benefit given within the two preceding years or intended to be given to a promoter and the consideration for such benefit; and (f) the general nature of all contracts required to be stated by paragraph 13 of Part I of the Fourth Schedule to the 1929 Act (now paragraph 14 of Part I of the Fourth Schedule). Paragraph 8 of Part I of that Schedule is somewhat modified and the provision in paragraph 13 as to inspection of the contracts required to be stated is omitted from this Act (see Fourth Schedule, Part I).

Reports to be set out in prospectus to which section 38 applies.—

The reports as to the finances of the company and of any business proposed to be purchased, which, by section 35 of the 1929 Act, were required to be set out in the prospectus, must now relate to the five financial years immediately preceding the issue of the prospectus instead of the three years hitherto required. Where the company has carried on business for less than five years and the accounts have been made up for a shorter period, the reports must relate to the whole of that shorter period. The report by the auditors required by paragraph 1 of Part II of the Fourth Schedule must also relate to the company's assets and liabilities at the last date to which the accounts were made up, as well as to profits and losses. The accountants' report required by paragraph 2 must relate to the assets and liabilities of the business to be purchased at that date, as well as to its profits. Where the company has subsidiaries the auditors' report must deal, not only with the profits and losses of the company, but also with those of the subsidiaries, either individually or treated as a whole, so far as they concern the members of the company. If any part of the proceeds of the issue is intended to be used to acquire shares in another company as a result of which that other company will become a subsidiary, that transaction must be treated as one for the purchase of that other company's business for the purpose

of paragraph 2 of Part II of the above-mentioned Schedule, and the accountants' report thereon must contain certain additional information (Fourth Schedule, Part II). The accountants' report required by paragraph 2 must be made by accountants who are qualified to be auditors of a company other than an exempt private company (see section 161).

Issue and registration of prospectus.—No expert's statement may be included in a prospectus unless he has given written consent to the prospectus being issued with the statement in it in the form and context in which it is included and has not withdrawn his consent before the delivery of a copy of the prospectus for registration and a statement to that effect appears in the prospectus. Default involves a fine of £500 (section 40).

The copy of the prospectus delivered for registration under section 41 must have such consent attached to it. The copy for registration must also, in the case of a prospectus issued generally, have a copy of any material contract which is required by the Act to be stated in the prospectus attached to it or, if the contract is not in writing, a memorandum thereof, as well as a statement setting out any adjustments made in the auditors' or accountants' report with the reasons for such adjustments. Where any contract referred to is in a foreign language, the copy required must be a certified English translation (section 41). The right to inspect or to require copies or extracts of documents kept by the registrar of companies is exercisable in the case of documents registered with the copy of the prospectus only during fourteen days after the publication of the prospectus or with the permission of the Board of Trade (section 426).

Exclusion of section 38 and relaxation of Fourth Schedule in case of certain prospectuses.—The above provisions do not apply to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with others that are being dealt in or quoted on a prescribed stock exchange. In the case of a prospectus issued generally, where application is made for permission to deal to a prescribed stock exchange, a certificate of exemption may be granted by that stock exchange to the applicant. Where such certificate is granted, if the necessary conditions are observed, the provisions of section 38 and the Fourth Schedule will not apply to such prospectuses, except in certain minor respects (section 39).

Mis-statements in Prospectus

(i) *Civil liability.*—An expert who has given his consent to the issue of a prospectus including a statement by him is not liable to compensate persons subscribing on the faith of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert, neither is he liable to indemnify any person against liability under section 43 (1). In respect of any such untrue statement, however, he will be liable to pay compensation unless he can prove that he had withdrawn his consent before delivery of a copy of the prospectus for registration or that he withdrew his consent after such delivery and before allotment and also gave reasonable public notice of his withdrawal and the reason therefor, or that he was competent to make the statement and had reasonable grounds to believe the statement to be true (section 43 (3)). If he has not given his consent, or, having given it, has withdrawn it, he is entitled to indemnity as if he had been named as a director without his consent (section 43 (4)). Any person otherwise liable for an untrue statement in a prospectus cannot rely, as a defence, on the statement being that of an expert unless he proves, in addition to the requirements of section 37 of the 1929 Act, that he had reasonable grounds to believe, and did, in fact, believe, that the expert was competent to make the statement and that he had given the necessary consent and had not withdrawn it, to the defendant's knowledge, before allotment (section 43 (2)). Contribution in respect of untrue statements is recoverable under the Law Reform (Married Women and Tortfeasors) Act, 1935 (or, in Scotland, under the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940), and not under the Companies Act, 1948, and no provision for contribution is therefore made in that Act.

(ii) *Criminal liability.*—Any person authorising the issue of a prospectus containing any untrue statement is liable, on conviction on indictment, to two years' imprisonment and/or a fine of £500 or, on summary conviction, to three

months' imprisonment and/or a fine of £100, unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did up to the time of issue of the prospectus believe the statement to be true. This does not apply to an expert whose statement is included in the prospectus with his consent merely on the ground of such inclusion (section 44). A statement is deemed to be untrue if it is misleading in the form and context in which it is included and a statement is deemed to be included in a prospectus if it is contained in any report or memorandum appearing on its face or incorporated in it by reference or issued with it (section 46).

Statements in lieu of prospectus.—A company which does not issue a prospectus or, having issued a prospectus, does not allot any of the shares offered to the public, is required to deliver to the registrar of companies before allotting shares or debentures a statement in lieu of a prospectus (section 48). Similarly, under the 1929 Act, a private company on becoming a public company was required to deliver a statement in lieu of prospectus, though there was an alternative course of issuing a prospectus (section 27 of the 1929 Act); this is now modified so that the only obligation is to deliver a statement in lieu of prospectus, but that obligation is removed if a prospectus, complying with the Act, is issued within the period allowed for delivery of the statement (section 30 (1)). If a business is to be acquired, or shares are to be acquired in a body corporate which will then become a subsidiary, unissued shares or debentures (in the case of a private company becoming a public company) being applied for this purpose, the statement in lieu of prospectus is to contain, in relation to the business or body corporate whose shares are to be acquired, accountants' or auditors' reports as to profits and losses in each of the last five financial years, and of the assets and liabilities at the last date to which accounts have been made up (sections 30 (1), 48 (1), and Schedules III, V). The reports should have endorsed or attached a written and signed statement setting out any adjustments, as respects the figures of profits, losses, assets or liabilities, made in the report and giving the reasons for these adjustments (sections 30 (2), 48 (2), Schedules III, V). The forms of statement in lieu of prospectus are amended in like manner as has been indicated previously with regard to matters required to be stated in a prospectus (Schedules III, IV, V). The penalties for untrue statements in a prospectus (see section 44) are applied to untrue statements in a statement in lieu of prospectus and the penalties for contraventions of sections 30 and 48 of the Act are applied to contraventions of these provisions, while the penalties under section 438 for false statements, apply to a statement in lieu of prospectus delivered under section 30 as well as one delivered under section 48 (section 30 (3) (4), 48 (4) (5)).

Interpretation of provisions relating to prospectuses, etc.—An invitation to a section of the public to subscribe for shares or debentures that can properly be regarded as not being calculated to result in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of those making or receiving it is not to be regarded as an offer or invitation to the public. Subject to these provisions, any such offer or invitation to any section of the public is to be construed as an invitation to the public and the provisions as to prospectuses apply to such offers or invitations (section 55).

Allotment

Allotments of shares or debentures may not be made in pursuance of a prospectus issued to the public generally before the beginning of the third day after the issue of the prospectus, or such later date as may be specified in the prospectus. An allotment in contravention of this provision is not invalidated, but such contravention involves a penalty of £500. The same provisions apply to a prospectus offering shares or debentures for sale, the penalty clause then applying to the person by or through whom the offer is made. An application made under a prospectus issued generally is not revocable until after the third day after the time of the opening of the subscription lists unless some person responsible for the prospectus has previously issued a public notice under section 43, which has the effect of excluding or limiting his responsibility (section 50). This last provision is specially designed to check the operations of "stags". In the case of any prospectus, whether issued generally or not, which states that

application has been or will be made to deal with the shares or debentures offered on any stock exchange, any allotment made on the strength of the prospectus is void unless permission is in fact applied for before the third day after the first issue of the prospectus. An allotment is also void if permission is refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period, not exceeding six weeks, as may, within those three weeks, be notified to the applicant by or on behalf of the stock exchange. Where an allotment becomes void under the above provisions, all allotment moneys become repayable without interest. If, however, they are not repaid within eight days after the company becomes liable to repay them, the directors are liable to repay them with interest at the rate of 5 per cent. So long as the company may become liable to repay them, allotment moneys must be kept in a separate bank account. Default in so doing involves a penalty of £500. There can be no contracting out of these provisions (section 51). A company may not commence business, or exercise borrowing powers so long as the liability to repay the allotment moneys remains and a paragraph to that effect is added to section 109 (1) (section 109 (1) (c)).

Other Provisions as to Shares and Debentures

Financial assistance by a company to purchase its own shares.—The prohibition against a company providing financial assistance for the purchase of its own shares is extended to the company's holding company and a subscription for shares is regarded as equivalent to the purchase of shares (section 54).

Application of premiums received on issue of shares.—Where shares are issued at a premium a sum equal to the amount of the premiums must be transferred to a "share premium account" and the provisions as to reduction of share capital apply, with certain exceptions, as if the share premium account were paid-up share capital. The amount of that account must be shown in the company's balance sheet. The share premium account may be applied in paying off unissued shares to be issued as fully paid bonus shares, to writing off the company's preliminary expenses or the expenses on any issue of shares or debentures, or in providing for the premium payable on redemption of redeemable preference shares or of debentures (section 56).

Redeemable preference shares.—Where a company redeems redeemable preference shares otherwise than out of the proceeds of a fresh issue, the amount which must be transferred to the capital redemption reserve fund must be a sum equal to the *nominal* amount of the shares redeemed and not merely the amount applied for the redemption and the provision previously contained in section 46 of the 1929 Act that the premium, if any, payable on redemption must be provided out of profits now applies to all cases and not merely where the redemption is out of the proceeds of a fresh issue. The redemption of such shares will not automatically reduce the authorised share capital. The power conferred by section 46 (5) of the 1929 Act to apply the capital redemption reserve fund in paying up unissued shares of the company to be issued as bonus shares, limited by that Act to shares referred to in subsection (4) of that section, is now exercisable without reference to that subsection (section 58). The statements required by the Third and Fifth Schedules and the Eighth Schedule, paragraph 3 (replacing section 46 (2) of the 1929 Act) will, in future, state the earliest date on which the company has power to redeem such shares, instead of the date on or before which they are, or are liable, to be redeemed.

Certification of transfers.—The certification by a company of an instrument of transfer amounts to a representation by the company that it has had produced to it such documents as on their face show a *prima facie* title in the transferor but not as a representation that he has in fact a title to the shares or debentures transferred. The company has the same liability to any person acting on the faith of a false certification as if the certification was fraudulent. The words "certificate lodged" or words to the same effect on an instrument of transfer amount to certification, and certification by a person authorised to issue certificated instruments of transfer or to certificate transfers on behalf of the company or by an officer or servant of the company or any other body corporate authorised to certificate transfers is deemed to be made by the company (section 79).

Register of debenture holders.—The provisions as to the place where the register of members is to be kept (see section 110) apply to any register of debenture holders kept in Great Britain, including a duplicate copy kept in Great Britain of any such register or part thereof kept abroad. Where part of the register is kept in Great Britain and part outside, that part kept in Great Britain is to be treated as the principal register and the other part as the dominion register for this purpose. Every person now has the right to inspect the register and to receive a copy of it, but if he is not a registered shareholder or debenture holder, he may exercise the right of inspection only on payment of a fee (sections 86, 87).

Liability of trustees for debenture holders.—No valid provision can be made for relieving a trustee for debenture holders from liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee or for absolving him from showing such care and diligence otherwise than by entitling him to rely on the opinions or information of others. A release will not, however, be invalid if it is otherwise validly given in respect of anything done or omitted to be done before the release, and a provision enabling a release to be given is valid if agreed to at a special meeting by 75 per cent. of the debenture holders and is given either with respect to specific acts or omissions or on the trustee dying or ceasing to act. With respect to any provision already in force when the Act came into operation, the trustee then acting retains the benefit thereof and any right of indemnity thereunder remains valid. A 75 per cent. majority of the debenture holders may, by special resolution at a meeting summoned for that purpose, give the benefit of any provision already in force to all trustees, present and future, or to any named trustees or proposed trustees (section 88).

Numbering of shares.—Section 62 (2) of the 1929 Act, which required all shares to be numbered, is modified to provide that fully paid-up shares which rank *pari passu* for all purposes need not thereafter have a distinguishing number (section 74), and sections 95 (1) and 97 (1) of the 1929 Act relating to particulars of shares to be entered in the register of members are modified accordingly (sections 110 (1) (a), 112 (1) (b)).

PART III.—REGISTRATION OF CHARGES (Sections 95–106)

A charge for rent or other periodical sum issuing out of land is not a charge which requires registration under Part III, and the provision in section 93 that a copy of the instrument charged may be delivered for registration in the case of a charge created abroad applies wherever the instrument comprises any property situated abroad, even if other property is included (section 95). Where property is released from a charge or the debt satisfied, a memorandum of the fact is to be entered on the register (section 100). A company is no longer required to keep a chronological index of registered charges (section 89 of the 1947 Act).

PART IV.—MANAGEMENT AND ADMINISTRATION (Sections 101–210)

The principal object of the changes incorporated in this Part of the Act is to secure greater financial democracy and the new provisions are so framed as to make it easier for shareholders to influence and control their managements.

Registered Office and Name.—A company must have a registered office not later than the fourteenth day after incorporation and must give notice of its situation and any change thereof within 14 days of incorporation or of the change, instead of the 28 days required in each case by section 92 of the 1929 Act. The provisions previously contained in section 93 of that Act regarding publication by a company of its name are applied to business letters of the company, but no longer apply to advertisements (sections 107, 108).

Register of Members and Annual Return

Register of members.—This may be kept at the place where it is made up, instead of at the registered office of the company, so long as it is in the country in which the company is registered. If it is made up by an agent, it may be kept at his office (section 110 (2)). Where the company keeps an index of the names of members, it must be kept at the same place as the register (section 111 (3)) and where a dominion register is kept under section 119, the duplicate dominion register must be kept at the same place as the principal

register (section 120 (3)). Where, however, the register is not kept at the company's registered office, notice of the place where it is kept and of any change in that place must be sent to the Registrar of Companies, default rendering a company and its officers liable to a default fine. Where it is kept at an agent's office, he will be similarly liable if the default is attributable to him (section 110). The register need not state the occupations of the members (1947 Act, section 51).

Annual return.—Companies need not now make an annual return in the first year of incorporation or in the following year unless, under the provisions of section 131, it is required in that year to hold an annual general meeting. A company having a share capital must date its annual return as at on the fourteenth day after its annual general meeting (see Sixth Schedule) and in the case of every company which has to make a return, the return must be completed within 42 days of the meeting (section 126). The return need no longer be contained in a separate part of the register of members and the relevant portions of sections 98 and 110 of the 1929 Act were therefore repealed by section 52 of the 1947 Act. The annual return must state where the register of members is kept, if it is not kept at the registered office, and must specify such particulars regarding the company's secretary as are required to be contained in the register of directors and secretaries (see section 125). It must also include a copy of any balance sheet laid before the company in general meeting during the period to which the return relates, and not only of the last audited balance sheet. A copy of the directors' report accompanying such balance sheet and certified in the same way as the balance sheet must also be included (section 127). In the case of a company having a share capital, the particulars required by section 124, regarding past and present members and the shares and stock held and transferred by them need be given only every third year, particulars of changes alone being sufficient in the two intervening years. Neither need such company state the occupations of the members mentioned in the return (see sections 52, 53 of the 1947 Act). Private companies as such are no longer exempt from the obligation to include in the annual return a copy of the balance sheet and annexed documents. This privilege is now accorded only to the "exempt private company", as to which, see *infra* (section 129). The copy of the annual return forwarded to the registrar, the certificate as to any balance sheet included in the return and any certificates as to the annual return of a private company must all now be signed both by a director and by the secretary (section 128).

Exempt private company.—The exemptions as to the contents of the annual return will now apply only to an exempt private company. The basic conditions for a company to fall within this category are that no body corporate is the holder of any of its shares or debentures and that no person other than the holder has any interest in any of those shares or debentures. There are certain exceptions in the case of normal dealings of a business nature, in cases of personal representatives of a deceased holder and trustees holding on the trusts of a will or family settlement, in cases of disability and trusts for employees, in the case of shares held by another exempt private company and banking or finance companies providing capital, and in the case of shares or debentures held in connection with any bankruptcy, liquidation, etc. The number of persons holding debentures must not exceed 50 and no body corporate may be a director nor may there be any arrangement to which the company or its directors are privy whereby the policy of the company is capable of being determined by any person other than the directors, members and debenture holders or trustees for debenture holders (section 129 and Seventh Schedule).

Meetings and Proceedings

Annual general meeting.—An annual general meeting must be held each year except, in certain cases, in the year of its incorporation or the following year, and must specify the meeting as such in the notices calling it. The powers of the Court under section 112 (3) of the 1929 Act to call or direct the calling of a general meeting in default are transferred to the Board of Trade (section 131).

Length of notice of meetings and of business thereat.—The length of notice required for a meeting for the passing of a special resolution is left undisturbed at 21 days. As to other company meetings, instead of the 7 days' notice required by section 115 (1) of the 1929 Act, 21 days' notice is now required

for the annual general meeting, and 14 days for any other meeting, except in the case of an unlimited company, where the period remains at 7 days. Any provision of a company's articles to the contrary is void (section 133 (1) (2)). These requirements may be waived, in the case of the annual general meeting, by agreement of all the members, and in the case of any other meeting, by a 95 per cent. majority (section 133 (3)). Consequential amendments are made in sections 141 (2) (4), 155 (1), 159 (5). A new type of resolution is introduced, viz., a resolution requiring special notice of 28 days (section 142).

Right to demand a poll.—The right to demand a poll, which previously depended largely on the articles (cf. section 117 (4) of the 1929 Act) is strengthened; any provision in the articles is void if it has the effect of excluding the right on any question other than the election of the chairman of the meeting or the adjournment of the meeting, or of making ineffective such demand when made by five members having the right to vote at the meeting or by such less number as represent a certain proportion of the voting strength of the company (section 137).

Voting at meetings.—The right of members to appoint proxies and the right of a proxy to vote on a poll have also been made statutory. In the case of a private company, a proxy may also speak at the meeting as well as vote, although, in the absence of contrary provision in the articles, a member of a private company may not appoint more than one proxy for the same occasion, and, in the case of any company, proxies may vote only on a poll (section 136 (1)). Unless the articles otherwise provide, these provisions do not apply to a company not having a share capital (*ibid.*). A proxy need not be a member of the company, and the right of a member to appoint such proxy must be made clear in every notice convening a meeting (section 136 (2)). The instrument appointing a proxy may not be required to be lodged more than 48 hours before the meeting (section 136 (3)), and directors of a company may not issue, at the company's expense, invitations to a limited number of members to appoint specified persons as proxies (section 136 (4)). On a poll, a member need not use all his votes and may cast those he uses in different ways (section 138).

Circulation of members' resolutions, etc.—Facilities are given to members of a company to introduce their own resolutions at the annual general meeting and to circulate, through the company's machinery, statements in support of such resolutions, or in opposition to resolutions or other business to be dealt with at any meeting. Certain conditions must be complied with (section 140).

Accounts and Audit.—While the foregoing provisions were designed to give greater protection and a greater measure of control over the affairs of a company to its shareholders, the best safeguard is to ensure that shareholders should get the fullest possible information concerning the company's affairs. The individual shareholder may not always appreciate the significance of the facts which are submitted to him, but, provided the facts are presented fully and accurately, informed opinion of accountants, lawyers and the financial Press will be available to voice their criticisms, if any, and so enable the ordinary shareholder in many cases to become better informed. Accordingly, it is provided that books of account must be such as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions (section 147 (2)), every balance sheet must give a true and fair view of the state of affairs of the company at the end of its financial year and every profit and loss account must give a true and fair view of the company's profit or loss for the financial year (section 149).

In the case of a company operating outside Great Britain, books of account must also be kept at a place in Great Britain. The accounts so kept must be open at all times to inspection by the directors and must disclose with reasonable accuracy the financial position at intervals not exceeding six months. They must be such as to enable the company's balance sheet and profit and loss accounts to be prepared in the prescribed manner (section 147 (3)).

The balance sheet and profit and loss account of any company must comply, so far as applicable, with the requirements of the Eighth Schedule, *post*, unless modified by the Board of Trade for the purpose of adapting them to the circumstances of the company (section 149 (2), (4)), but must, in any circumstances, give a true and fair view. This is the prevailing principle regarding all accounts,

A company need not, however, prepare a separate profit and loss account where it has subsidiaries and presents a consolidated profit and loss account which complies with certain requirements (section 149 (5)). In any other case, failure to comply with the requirements of section 149 or with any other requirements as to matters to be stated in accounts renders a director liable on summary conviction to six months' imprisonment, if he has been wilful, or otherwise, to a fine of up to £200 (section 149 (6)).

Group accounts.—The 1947 Act, for the first time, took legal cognizance of the homogeneity of groups of companies, i.e., holding companies with their subsidiaries, which, while in theory are separate entities, in practice operate as one organisation; and the relevant provisions of that Act have here been incorporated. Sections 150–154 embody the general principle that control must be by informed opinion and apply this principle to such groups of companies. With certain exceptions, all holding companies are required to present group accounts dealing with the state of affairs and profit and loss of the company and its subsidiaries and such group accounts must be laid before the company in general meeting when the company's own profit and loss account are so laid, default rendering a director liable to a penalty of £200, and, where the default is wilful, six months' imprisonment (section 150). In general, such group accounts are to take the form of consolidated accounts comprising a consolidated balance sheet and a consolidated profit and loss account, although the form may be varied where such variation will have the effect of making the information so conveyed more readily appreciated by the company's members (section 151). The essential requirement is that such group accounts, as in the case of accounts of single companies, must give a true and fair view of the state of affairs and profit and loss of the company and its subsidiaries *as a whole* so far as it concerns members of the company (section 152 (1)). No rigidly set form is imposed, but in general, where the group accounts are prepared as consolidated accounts, they should comply with the requirements of the second part of the Eighth Schedule, so far as applicable, subject to any modification made by the Board of Trade for the purpose of adapting those requirements to the circumstances of the company (section 152 (3)). Where the group accounts are not presented as consolidated accounts, they should give equivalent information (*ibid.*). In general, so that the group accounts may present a proper picture of the affairs of the group as a whole, the financial year of the subsidiaries must be adjusted to coincide with that of the parent company, although, where there are good reasons against it, this need not be done. For the purpose of such adjustment, the Board of Trade may sanction the postponement of the submission of the accounts or the holding of the annual general meeting or the making of the annual return in any particular year (section 153). A fairly exhaustive definition of "holding company" and "subsidiary company" is given in section 154.

Liability of directors for defective accounts.—As has already been mentioned, directors failing to comply with the provisions as to accounts are rendered liable to certain penalties (see sections 149 (6), 150 (3)). See also sections 147 (4), 148 (3)). A director will, however, escape such liability if he shows that he reasonably relied on a competent and reliable person, whose duty it was to see that the provision was complied with and who was in a position to discharge that duty (section 157 (3)).

Directors' report.—The directors' report must deal, so far as it is material for the appreciation by the members of the company's affairs and will not, in the directors' opinion, be harmful to the business of the company or its subsidiaries, with material changes in the nature of the company's business during the financial year (section 157 (2)).

Circulation of copies of accounts.—The profit and loss account, and the group accounts (if not already incorporated in the balance sheet or profit and loss account) are to be included among the documents required by law to be annexed to the balance sheet and must be included among the documents to be circulated among persons entitled, under section 158, to copies of the balance sheet. Every member of a company having a share capital, whether or not he is entitled to receive notices of general meetings, is now entitled to receive a copy of the balance sheet and annexed documents, as are also debenture-holders. Private companies are placed on the same footing as public companies for this purpose (section 158).

Auditors.—The rights and duties of auditors as laid down in section 134 of the 1929 Act are extended. They must now report on the profit and loss accounts and on the group accounts as well as on the balance sheet or the accounts examined by them, and, in place of the statements required by subsection (1) of that section, their report must contain a statement on the matters set out in the Ninth Schedule. The penalties as to false statements contained in section 438 are now applied to the auditors' report. The auditors will be the judges of what information or explanation is necessary for the performance of their duties and the limitation imposed by section 134 (2) of the 1929 Act on their right of access to books, accounts and vouchers in respect of branches of certain banks outside Europe is removed. They are entitled to attend any general meeting and to receive all notices and communications which members of the company are entitled to receive. They may also be heard at a general meeting on any part of the business of the meeting which concerns them as auditors (section 162). Only properly qualified accountants may, however, be appointed auditors, except in the case of an exempt private company (as to which, see section 129). The qualifications required are set out in section 161.

Auditors will hold office from the conclusion of the annual general meeting at which they are appointed until the conclusion of the next and a retiring auditor will be automatically reappointed unless he has ceased to be qualified, or he is superseded by an affirmative resolution or he has given written notice of his unwillingness to be reappointed. If no auditors are appointed at an annual general meeting, the company must give notice of the fact to the Board of Trade, who may fill the vacancy. The remuneration of the auditors may be fixed by the company in general meeting or by the Board of Trade or the directors. In the last two cases, however, the amount must be shown as a separate item in the company's profit and loss account (section 159). A resolution to supersede an auditor is one of which special notice (of 28 days) is required, and a copy of the resolution must be sent to the retiring auditor, who may make written representations to the company and may require to be heard orally (section 160).

Directors and other Officers

Every company must now have at least one director and a secretary, who may not be the sole director. Nor may a corporation act as secretary if its sole director is also the company's sole director, and if a corporation is secretary to the company, its sole director may not be the company's sole director. Provision is, however, made for the temporary carrying out of the secretary's duties while the office is vacant or the secretary is for some other reason incapable of acting. Anything required to be done by or to both a director and the secretary is not satisfied by its being done by or to a director acting as, or in place of, the secretary (sections 176-179).

Qualification share.—References in section 181 to a director's share qualification refer only to such qualification at the time of his appointment, and subsequent alterations in that qualification will not affect his position under that section (section 181 (3)).

Appointment of directors to be voted on individually.—Except in the case of a private company, each director must be appointed by a separate resolution unless a resolution has been previously agreed to without dissent permitting the appointment of two or more directors by one resolution at that meeting. Any resolution moved in contravention of the foregoing is void and no provision for the automatic reappointment of retiring directors in default of another appointment will apply. Where a director has been appointed by such void resolution, his acts until the appointment is upset are valid (section 183). The section does not affect a resolution altering the company's articles (*ibid.*).

Removal of directors.—Except in the case of a director of a private company holding office for life on July 18, 1945, a director may be removed by ordinary resolution, notwithstanding anything in the articles or in any agreement between the director and the company. Special notice of 28 days is required in the case of such resolution or of a resolution to appoint somebody in his place, and a copy of the resolution must be sent to the director concerned, who may make written representations to the company and may require to be heard orally. If the meeting does not appoint a successor, the vacancy created

by a director's removal may be filled as a casual vacancy. A director appointed in place of the director so removed retires on the day on which the person in whose place he was appointed would have retired. The removal of a director in this way does not affect any right he may have to compensation or damages, nor does this provision derogate from any other power to remove a director (s. 184).

Retirement of directors under age limit.—The Act lays down an age limit of 70 for directors. The limit is not an arbitrary one, and applies only to certain companies set out in section 185 (8). Any company registered after the beginning of 1947 may make special provisions in its articles, and companies already registered before that date may alter their articles accordingly, if those articles do not already contain an age limit for directors. This age limit may, in all cases, be whatever age the company desires to fix, and in all such cases the limit of 70 will not apply. Moreover, a company may appoint an individual director at any age, or require a director to retire at any time, with the approval of the company in general meeting by a resolution of which special notice is required. The notice must state the age of the person to whom it relates. A director who is in office on July 1, 1948, will retire at the conclusion of the third annual general meeting thereafter, if he has attained the age of 70 before the commencement of the meeting (section 185). The provision does not apply to private companies as mentioned in section 185 (8). Any person who reaches the retiring age laid down by the Act or by the company's articles and who is appointed, or, to his knowledge is proposed to be appointed director, must give notice of his age to the company, under penalty of £5 for each day during which he fails to make the disclosure or continues to act as director (section 186). Such notice need not be given, however, where the person is about to be re-appointed on the termination of a previous appointment as director (*ibid.*), since his date of birth will have been entered in the register of directors and secretaries (see section 200).

Register of directors and secretaries.—The register required to be kept under section 144 of the 1929 Act (now section 200) is renamed the "register of directors and secretaries" and the same particulars, with certain exceptions, are required to be kept therein of the secretary as are required of the director. In the case of a company subject to section 185 (which deals with the retiring age of directors), the register must include a director's date of birth. Particulars of nationality of origin are no longer required under sections 200 or 201 either in the case of a director or of the secretary, nor are particulars required of directorships held in any other companies in the same group. Particulars of other directorships held by a director must, however, be entered in the register. The construction of the terms used in section 145 (4) (b)–(e), of the 1929 Act are now incorporated in both sections 200 and 201, but paragraph (e) (ii) is now amended to remove the distinction between natural-born British subjects and others, so that the former christian name or surname of any person, whether British or not, is not required if that name was changed or disused before the person bearing the name attained the age of 18, or where it was changed or disused at least twenty years previously. In the case of joint secretaries, the required particulars must be given of each of them, except in the case of partners in a firm acting as secretary, in which case the name and principal office of the firm may be stated instead of the separate particulars (section 200).

Power to restrain fraudulent persons from managing companies.—The Court before whom a person is convicted on indictment of any offence in connection with the promotion, formation or management of a company or the Court having jurisdiction in winding-up, where it appears in the course of the proceedings for the winding-up that a person, while an officer of the company, has been guilty of an offence involving fraud in relation to the company or breach of duty to the company, may make an order disqualifying that person from acting as director or in any way taking part in the management of the company without leave of the Court for a specified period not exceeding five years. In the case of a winding-up, the official receiver or the liquidator or any past or present member or creditor may apply for such an order. An order so made does not affect the criminal liability of the person concerned, and if he acts in contravention of the order, he is liable for each offence, on indictment, to two years' imprisonment, or, on summary conviction, to six months' imprisonment and/or a fine of £500 (section 188).

Payments to Directors

Prohibition of tax-free payments to directors.—Tax-free payments to directors by way of remuneration are prohibited except under a contract which was in force on July 18, 1945, and which expressly provides for such payments. Any such provision in the articles or in any contract other than as above, will have effect as if it provided for payment, as a gross sum subject to income tax and surtax, of the net sum for which it actually provides (section 189).

Prohibition of loans to directors.—Loans by a company, other than an exempt private company, to one of its directors or to a director of its holding company are prohibited except in the case of a loan by a subsidiary to its holding company, where the holding company is a director of the subsidiary. Neither may a company guarantee or provide a security for such a loan, unless the loan is made or the security, etc., given in respect of expenditure on behalf of the company or to enable the director properly to perform his duties as an officer of the company or where the company's ordinary business includes the lending of money, etc., and the loan is made in the ordinary course of business. Where the loan, etc., is made to meet expenditure on behalf of the company or to enable the director the better to perform his duties as such, the prior approval of the company is necessary, or, if no prior approval has been given, it may be made only on condition that if the necessary approval is not forthcoming at or before the next annual general meeting, the loan will be repaid or the liability under the guarantee or security discharged within six months thereafter. If such approval is not given, all the directors authorising the loan, etc., are jointly and severally liable to indemnify the company against any resulting loss (section 190).

Payments received by directors for loss of office or on retirement.—Any payment by a company to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, other than a *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services, must have prior approval by the company after disclosure to the members of particulars of the proposed payment including the amount thereof (section 191). The provisions as to disclosure contained in section 150 (3) of the 1929 Act (now section 192) are extended to apply to an offer made by or on behalf of another company with a view to the first company becoming its subsidiary or a subsidiary of its holding company or by or on behalf of an individual as a result of which that individual would acquire one-third of the company's voting power and to any other offer which is conditional on acceptance to a given extent. A director must also account under section 193 (3), to persons who have sold their shares as a result of the offer where the making of the proposed payment is not approved before the transfer by a meeting of the shareholders concerned summoned for the purpose. All holders of shares of the same class as those concerned in the offer must be invited to such meeting, and where such shareholders are not all the members of the company and there is no provision in the articles for summoning or regulating the meeting without giving notice to those members who are not concerned, it is to be convened under the provision of this Act and of the company's articles relating to general meetings, modified, if necessary, by the Board of Trade. If no quorum is present either at the meeting or at a later adjourned meeting, approval for the payment will be deemed to have been given. The expenses of distributing any sum paid to the shareholders concerned may not be deducted from that sum. Unless the contrary is shown, a payment will be deemed to have been made under sections 192, 193, where it was made in pursuance of an arrangement entered into as part of the agreement for transfer, or within one year before or two years after the agreement or the offer leading thereto and the transferor was privy to the arrangement (section 194).

Disclosure of Payments to and Interest of Officers

Register of directors' shareholdings, etc.—Directors being in a position of trust, their personal conduct in regard to the affairs of their companies must not only be in fact above reproach, but must also be seen to be above reproach. In the case of dealings by directors in the shares of the company in which they are directors, for example, there should be no suspicion that they have profited from any inside knowledge which they get as directors. It is therefore provided that a register of directors' shareholdings should be kept by every company. In that

register must be entered particulars of every director's holding (with certain exceptions), showing the number, description and amount of any shares or debentures in the company and in any of its subsidiaries or in any subsidiaries of its holding company which are held in trust for him or of which he has a right to become holder. Any transaction affecting those particulars must be recorded, with the date and price. The nature and extent of a director's interest or right in or over any shares or debentures so recorded may, if he so requires, be indicated in the register. The register must be kept by the company at its registered office and must be open to inspection for specified periods before and after the annual general meeting and at the meeting itself. It must be available at any time to the Board of Trade, who may also call for a copy of the register or any part thereof at any time. Penalties are imposed for default in these requirements or for refusal to allow inspection, and, in case of such refusal, the Court may order an immediate inspection (section 195).

Particulars in accounts of directors' salaries, pensions, etc.—The accounts laid before a general meeting must show the aggregate amount of directors' emoluments, of directors' or past directors' pensions and of any compensation to directors or past directors in respect of loss of office, whether by the company or from any other source. Emoluments from all sources arising from a director's position as director must be disclosed, and those received as director must be shown separately from other emoluments. Emoluments include all sums charged to income tax, contributions paid in respect of directors under any pension scheme and the estimated value of any other benefits received otherwise than in cash. Pensions include superannuation allowances, gratuities or similar payments and anything paid under a pension scheme other than one which is adequately maintained by the contributions paid. Pensions as directors must be shown separately from other pensions. Compensation includes sums paid as consideration for or in connection with a person's retirement from office. Amounts received as compensation from the company or its subsidiaries must be shown separately from those received from other sources. Where the accounts do not comply with these requirements, it is the duty of the auditors by whom the accounts are examined to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars (section 196). These requirements apply to all companies and to managing directors as well as others. As they supersede the provisions of section 128 of the 1929 Act, so far as it relates to directors' remuneration, and section 148 in its entirety, the latter section and the relevant portions of the former were accordingly repealed by section 38 of the 1947 Act and are not reproduced in this Act.

Particulars in accounts of loans to officers.—The provisions of section 128 of the 1929 Act which required loans to officers to be shown in the accounts are extended to apply to loans to any person who has been an officer during the financial year made before he became an officer. Subsidiaries are placed in the same position as the company itself for the purpose of subsection (1) (a), but subsection (2), which exempts from those provisions loans made in the ordinary course of business by a company whose ordinary business includes the lending of money or loans made in accordance with a general practice adopted with respect to a company's employees, does not apply to subsidiaries (section 197).

General duty to make disclosure.—For the purposes of the matters required to be disclosed under the provisions dealt with above (sections 195–197), any person who is or has at any time during the preceding five years been a director (or, for the purpose of section 197, an officer) must give notice in writing to the directors of such matters relating to himself as may be necessary. In the case of disclosure required under section 195, the notice must be in writing and must be given at a meeting of directors or the person giving it must take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given. Default renders the offender liable to a fine of £50. The declaration of interest in contracts required by section 149 of the 1929 Act (now section 199), when given as a general notice of membership of a specified company under subsection (3) of that section, must be given in the same way to be effective (section 199).

Information as to compromises with creditors and members.—A notice summoning a meeting of creditors or members for the purpose of agreeing a compromise or arrangement must be accompanied by a statement explaining

the effect of the compromise or arrangement, and in particular stating any material interests of the directors and the effect on such interests of the compromise or arrangement, in so far as it is different from the effect on similar interests of other persons. If the notice is given by advertisement, it must include such statement or must state where and how a copy may be obtained. Such copies must be furnished free of charge, on application, to a creditor or member. Where the compromise or arrangement affects the rights of debenture holders, the statement must give the same information as regards the trustees of any deed for securing the issue of the debentures. Penalties up to £500 are laid down in the case of default in complying with these provisions (section 207). The general duty to make disclosure imposed on directors and officers under section 198 is also imposed by this section on trustees for debenture-holders (section 207 (5)).

Investigations

The limitations imposed by the 1929 Act on the powers of the Board of Trade to appoint inspectors resulted in a certain amount of ineffectiveness in this respect and wider powers are now conferred on the Board by sections 164–175. The Board of Trade are given power to investigate nominee ownership not only where it appears in the public interest, but whenever there seems good reason to do so (section 172). They also have wide powers to require information without inspection (section 173) and to deal with obstruction (section 174).

Inspection of company's affairs.—Banking companies having a share capital and other companies are placed on the same footing as to the appointment of an inspector, who may be appointed on the application of 200 members, even though they may constitute less than 10 per cent. of the whole, and the motives of the applicants will not affect the power of the Board of Trade to appoint an inspector (section 164). Officers and agents of the company, past as well as present, must produce to the inspector all books, etc., in their custody or power and must give all assistance they are reasonably able to give. The term “agent” includes the company's bankers, solicitors or auditors (section 167). The Court may, on the application of the inspector, examine on oath any person for the purpose of the investigation (section 167 (4)) and the inspector may also investigate the affairs of any subsidiary or the holding company or a subsidiary of the holding company (section 166). Provision is also made for copies of the inspector's report to be made available to any person interested and for interim reports by the inspector (section 168). Apart from the power of the Board of Trade to appoint inspectors on the application of members, an inspector must be appointed if the company so resolves by special resolution or the Court so orders, and the Board of Trade may appoint an inspector, if there are circumstances suggesting fraud or illegality in the formation or conduct of the business of the company, or that there was oppression of any part of its members or that persons concerned with the formation or management of the company had been guilty of fraud or other misconduct towards the company or its members or that the members had not been given all reasonable information (section 165, *post*). Where an inspector is appointed by order of the Court, a copy of his report must be furnished to the Court (section 168 (2) (d)). With certain exceptions, section 137 of the 1929 Act was repealed by the 1947 Act, section 43, and a company may no longer itself appoint an inspector.

Proceedings on inspector's report.—The Board of Trade may, as a result of what the inspector reports, bring a petition for the winding-up of a company in certain cases or for an order under section 210, and may also, where the public interest requires it, bring proceedings in the company's name for damages for fraud or misfeasance or other misconduct in the promotion, formation or management of the affairs of the company or for the recovery of any of the company's property which has been misapplied or wrongfully retained. The Board of Trade must indemnify the company in respect of any costs or expenses incurred in connection with any such proceedings. Criminal proceedings may be brought by the Director of Public Prosecutions where the case requires it without considering whether it is desirable in the public interest that the prosecution should be conducted by him (section 169).

Expenses of inspection of company's affairs.—The expenses will be borne in the first instance by the Board of Trade, but they will be repayable in whole or in part in certain circumstances (section 170).

Appointment and powers of inspectors to investigate ownership of company.—In addition to the appointment of inspectors to investigate the affairs of a company, the Board of Trade may, where there appears good reason to do so, appoint an inspector to investigate and report on the membership of a company with a view to determining the true ownership of the company and must so do on the application of members of the company, unless satisfied that the application is vexatious. The scope of such an appointment may be general or it may be limited to a particular aspect. Within the limit of his appointment, the inspector may investigate any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or is likely to be observed in practice and which is relevant to the purposes of his investigation (section 172).

Power to require information as to persons interested in shares or debentures.—The Board of Trade may also investigate the ownership of shares or debentures without appointing an inspector for the purpose. In such case, they may require any person whom they reasonably believe to be or to have been interested in those shares or debentures or to act or to have acted in relation to those shares or debentures as the solicitor or agent of someone interested therein to give them information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who have acted on their behalf in relation to the shares or debentures. The penalty for default in giving the required information, or for making any false or reckless statement in giving such information is up to six months' imprisonment and/or a fine of £500 (section 173).

Power to impose restrictions on shares or debentures.—Where, in the course of investigations, there is difficulty, owing to the unwillingness of the persons concerned to assist the investigations, in finding out the relevant facts about any shares or debentures, the Board of Trade may impose restrictions on those shares or debentures. These restrictions may forbid the transfer of the shares, etc., or the exercise of voting rights in respect of them, or the issue of further shares in right of the shares in question or the payment of dividend thereon. This power will be subject to appeal to the Court, who may set aside the restriction on the application of any aggrieved party, either in whole or in part. The penalty for ignoring any restriction so imposed is up to six months' imprisonment and/or a fine of £500. A prosecution may only be instituted in England by or with the consent of the Board of Trade (section 174).

Saving for solicitors and bankers.—The disclosures required for the purposes of investigations do not apply to privileged communications to a solicitor or to a banker's information as to the affairs of any of his customers other than the company (section 175).

Minorities

The protection of minorities was enlarged by sections 9–11 of the 1947 Act, now incorporated in sections 209, 210. The Court is empowered, on the application by petition of any member who complains that the affairs of the company are conducted in a manner oppressive to some section of the members of which he is part, to make an order, as alternative to winding-up, regulating the future conduct of the company's affairs, or for the acquisition of the shares of the minority, with a corresponding reduction in the company's capital or any other order it thinks fit, and, by the same order, may make a consequential alteration in or addition to the company's memorandum or articles (section 210). As to the making of a winding-up order, although an alternative remedy exists, see section 225 (2). The time within which a dissenting minority may apply to cancel a variation of the rights attaching to any particular class of shares is extended from 7 days to 21 days (section 72). The rights of a transferee company to acquire the shares of a dissenting minority after a contract for transfer of shares of that class has been approved by the majority, is extended to cases where the transferee company already holds over 10 per cent. of the class of

shares affected, subject to certain conditions (section 209 (1)). A dissenting shareholder, whose shares have not been acquired in this manner, may, within three months of receiving notice of the transfer from the transferee company (which the company is bound to give within one month of the date of transfer), require the transferee to acquire his shares, which the company is then bound to do either on the terms of the original contract or on such other terms as may be agreed or as the Court may order on the application of either party (section 209 (2)). Where notice is given by the transferee company of their desire to acquire the shares of a dissentient, if the shareholder fails to transfer the shares, an instrument of transfer may be executed on behalf of the shareholder by any person appointed by the transferee company and the instrument is transmitted to the transferor company with the copy of the notice required to be sent under section 209 (2) (section 209 (3)).

PART V.—WINDING-UP (Sections 211–365)

Certain amendments, made by the 1947 Act, in the provisions of the 1929 Act with regard to winding-up, have been embodied in this Part, the more important being the extension of the discretion of the Court to make a winding-up order in cases of oppression of minorities, notwithstanding the existence of an alternative remedy (section 225 (2)), and a provision designed to check careless and reckless statements by directors in making a declaration of solvency by placing greater responsibility upon them (section 283).

Modification of grounds on which winding-up order may be made.—

The Court may make a winding-up order on a petition by members as contributories on the grounds that it is just and equitable, notwithstanding the existence of another remedy, provided that, in the absence of that other remedy, a winding-up order would be just and equitable and the petitioners are not being unreasonable in not pursuing that other remedy (section 225 (2)).

Preferential payments.—Clerks and servants are placed in the same category as workmen and labourers and all are now entitled to priority on winding-up or where a receiver is appointed under section 94 in respect of wages or salary for the previous four months to a maximum of £200, which is also now the amount to which priority is given to a sum ordered to be paid as compensation under the Reinstatement in Civil Employment Act, 1944 (sections 94, 319, 358).

Amendments as to declaration of solvency in voluntary winding-up.

—A declaration of solvency will have no effect unless it is made within five weeks before the company resolves to wind-up and it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration. The meeting of directors at which it is made need not be held before the notices convening the meeting for the passing of the resolution are sent out and the declaration may be registered at any time before the passing of the resolution. A director making the declaration without having reasonable grounds to believe that the company will be able to pay its debts within the specified period is liable to six months' imprisonment and/or a fine of £500, and if, in fact, the company is wound up on a resolution passed within five weeks after the making of the declaration and its debts are not discharged within the specified period, the onus will be on the director to show that he had reasonable grounds for his opinion (section 283). If the liquidator on such winding-up at any time forms the opinion that the company will not be able to pay its debts in full within the specified period, he must forthwith summon a meeting of the creditors and lay the facts before them. The penalty for default is a fine of up to £50. The winding-up is then conducted as a creditors' voluntary winding-up instead of a members' voluntary winding-up (section 288).

Fraudulent preference.—The period within which a preference is deemed to be fraudulent is increased to six months both in England and Scotland. Where the preference is, not of the principal creditor, but of a surety or guarantor, the principal creditor may recover the amount repaid by him together with the reasonable expenses of defending the proceedings from the surety or guarantor, and the recovery of such sum may be ordered by the same Court and on the same proceedings as that in which the payment was ordered to be returned to the liquidator as fraudulent (sections 320, 321).

Effect of floating charge.—Floating charges may be invalidated if created within 12 months before the commencement of the winding-up (section 322).

Miscellaneous Amendments as to Winding-up

(i) *Meetings*.—Minor amendments are made as to the yearly meeting to be summoned by the liquidator, as to the filling of a vacancy in the committee of inspection, and as to meetings of creditors where there is no committee of inspection (see sections 253 (7), 289, 290 (6), 295, 299, 300 (6), 303 (1), 315 (1)).

(ii) *Proceedings*.—The jurisdiction in winding-up is now exercised under Part III of the Judicature Act, 1925, and not under section 164 of the 1929 Act, as hitherto. That section is not, therefore, re-enacted in this Act. A contributory of a private company may present a winding-up petition where the company has made default in complying with the provisions required to be included in its articles to constitute it a private company where the number of members falls below seven (section 29), and an order for dissolution need only be made after the completion of a winding-up if the liquidator applies for such order (section 274 (1)). Provision is also made for setting aside, in certain cases, of the power of the liquidator in relation to execution against the company's property and attachment of debts due to the company (sections 325 (1), 326 (3)).

(iii) *Information*.—A copy of an order staying proceedings in a winding-up is to be forwarded to the Registrar of Companies and a minute thereof made in his books relating to the company (sections 256 (3), 307 (3), 460 (2)). A copy of the order of dissolution on completion of a compulsory winding-up must also be forwarded to the Registrar within 14 days (section 274 (2)). Notice to the Registrar of the appointment of a liquidator is to be given to the Registrar within 21 days and the notices must be published in the Gazette (section 305 (1)). Publication in the Gazette of notice of a resolution for voluntary winding-up is to be made within 14 days instead of 7 days (section 279 (1)). Audited accounts of the liquidator in a compulsory winding-up in England may be inspected by any person, but only on payment of a fee (section 249 (4)). The duty to print and circulate copies or a summary of the liquidator's accounts is placed on the liquidator, but the duty may be dispensed with altogether by the Board of Trade (section 249 (5)).

Property of dissolved company.—Other new provisions in this Part of the Act affect the liability of the Crown or any other person in respect of any rentcharge on any land vesting after the dissolution of a body corporate or on disclaimer, and confer power on the Treasury Solicitor to disclaim any property vested in the Crown as *bona vacantia* on a dissolution (sections 324, 355, 356).

Civil and criminal liability.—The responsibility of directors for fraudulent trading is extended to any person who is knowingly a party thereto and a conviction now involves two years' imprisonment and/or a fine of £500 (section 332 (3)). Other minor amendments relate to the responsibility of persons for keeping books of account (section 331 (1)), and to the offering of inducements with a view to influencing the appointment of a liquidator (section 336).

PART VI.—RECEIVERS AND MANAGERS (Sections 366–376)

The changes embodied in this Part of the Act amend and clarify the law with regard to receivers and managers appointed on behalf of debenture holders.

Disqualification of undischarged bankrupt from acting as receiver and manager.—An undischarged bankrupt acting as receiver and manager of a company's property on behalf of debenture holders is liable, on conviction on indictment, to two years' imprisonment, or, on summary conviction, to six months' imprisonment and/or a fine of £500, unless the appointment under which he acts and the bankruptcy both occurred before the coming into force of this provision or he acts under an appointment made by a Court order (section 367).

Information, statement and returns where receiver or manager appointed.—Where, in the case of an English company, a receiver is appointed on behalf of holders of debentures secured by a floating charge and the appointment refers to the whole or substantially the whole of the company's property, the receiver must forthwith send notice of his appointment to the company, who must, within 14 days or such longer period as may be allowed, submit to the receiver a statement in the prescribed form (see section 373) as to the company's affairs. Within two months of the receipt of the statement the receiver must send a copy of the statement with his comments to the Registrar of Companies and to the

Court, with a summary thereof to the Registrar and to the trustee for the debenture holders and to those debenture holders whose addresses he has and a copy of his comments or a notice that he has no comments to the company. He must also send to all concerned abstracts in the prescribed form showing his receipts and payments during successive periods of twelve months. Default in complying with these provisions renders the receiver liable to a fine of £5 for each day during which the default continues and the penalties for false statements under section 438 apply to any such statements in the abstract (section 372). The provisions of section 375 as to the enforcement by order of the Court of the duty of receivers to make returns are applied to a receiver and manager for debenture holders (section 375 (2)).

Receivers appointed out of Court.—A receiver appointed under an instrument need not send the copies and abstract required by section 372, (see *supra*), to the Court, but a copy of the abstract must be sent to the Board of Trade instead (section 372 (3)). Such receiver may apply to the Court for directions in relation to any matter arising in connection with the performance of his function and the Court may, on such application, give directions or make any order it thinks just. He is liable to the same extent as a receiver appointed by the Court on any contract entered into by him as such receiver, except so far as the contract otherwise provides, and he is entitled to an indemnity out of the assets. The power of the Court to fix the receiver's remuneration now extends to the period before the application or the making of the order, and is exercisable notwithstanding that the receiver has died or ceased to act. Where the receiver has received any remuneration in excess of the amount fixed, he may be required to account for the excess (section 369).

PARTS VII–XII.—COMPANIES NOT REGISTERED UNDER THE ACT (Sections 377–435)

Certain provisions of the Act are applied to companies which are not registered under the Act, both in the case of companies incorporated in Great Britain and those incorporated abroad.

Companies incorporated in Great Britain.—A winding-up order under section 225 (2) may be made in respect of an unregistered company as well as in the case of any other company (section 399). Certain other provisions are also applied to unregistered companies (section 435 and the Fourteenth Schedule).

Documents relating to companies wound up under repealed Acts.—The Registrar of Companies may direct the removal to the Public Records Office of documents relating to companies dissolved under earlier Acts, as well as under this Act (section 427).

Companies incorporated outside Great Britain.—A prospectus of a foreign company need not state its objects, but must include, where it incorporates a statement purporting to be made by an expert, the necessary consent by the expert (see section 40) and must have the effect of rendering all persons concerned bound by the provisions (other than penal provisions) of the Act relating to allotment (see sections 50, 51) so far as applicable. The copy prospectus required to be delivered to the Registrar of Companies for registration must comply with the provisions of section 41 (1). The provisions as to certificates of exemption (see section 39) also apply. The exemption under section 417 (5), in favour of a prospectus not issued generally does not extend to the requirement that a copy of the prospectus should be delivered to the Registrar for registration and that the prospectus should state on the face of it that this has been done, to liability for misstatements and to the provisions as to statements by experts and as to allotments (section 419). Foreign companies which have a place of business in Great Britain have power to hold land here (section 408). The requirements of this Act with regard to accounts are in general applied to foreign companies carrying on business here and a company registered in Northern Ireland which otherwise fulfils the conditions required for it to rank as an exempt private company is exempt from the requirements as to accounts if it delivers to the Registrar a certificate signed by a director and the secretary that it fulfils those conditions (section 410). The penalties as to false statements apply to foreign companies (section 438, Fifteenth Schedule). The list of directors

required to be delivered to the Registrar under sections 407 and 409 in the case of a foreign company carrying on business in Great Britain must also contain particulars of the company's secretary and the provisions as to name and nationality apply as in the case of companies registered in this country (see section 200), except that the date of birth need not be given and only those particulars of directorship required by section 344 of the 1929 Act need be given (section 407 (2)). The requirement as to the publication of the company's name, as in the case of British companies, does not apply to advertisements (section 411).

PART XIII.—GENERAL (Sections 436–462)

Loose-leaf records and accounts and records and accounts not kept in a bound book may be kept as valid books of account etc., provided adequate precautions are taken for guarding against falsification and facilitating its discovery (section 436). Power is given to vary certain provisions by regulation or order (section 454) and provisions are made for the laying of regulations and orders so made before Parliament (section 454 (4)).

Offences and Legal Proceedings

The powers of the Court as to offences and of the Director of Public Prosecutions and the Board of Trade to institute proceedings are extended by the Act so as to make it easier to bring proceedings and to detect offences, while the scope of persons liable is enlarged. In one minor respect, the procedure in civil proceedings is modified.

Production and inspection of books where offence suspected.—A judge in chambers in England and a Lord Commissioner of Justiciary in Scotland may order, on application by a specified applicant and on reasonable cause shown, the production of any books or papers of or under the control of a company in connection with the management of which an offence is suspected. The books and papers of the company's bankers, so far as they relate to the company's affairs, may also be ordered to be produced. The decision of the Court as to such production is not subject to appeal (section 441).

Extension of time limit for summary proceedings.—The director of Public Prosecutions and the Board of Trade or, in Scotland, the Lord Advocate, may bring summary proceedings in respect of any offence with regard to companies within 12 months from the date that sufficient evidence is available, in the opinion of the Director or of the Board or of the Lord Advocate, to justify the proceedings, so long as they are brought not more than three years after the commission of the offence (section 442).

Proceedings on indictment in Scotland against bodies corporate.—Special provisions are made as to proceedings on indictment in Scotland against a company, especially as regards service of the indictment and the procedure at the hearing (section 443).

Procedure on application for confirmation of reduction of share capital.—Procedure by petition is no longer required by the Act in the case of an application to the Court for confirmation of a reduction of share capital (see section 67 (1)). By R.S.C. (Companies), 1948 (S.I. 1948 No. 1756 (L. 20)), r. 2 (5), however, procedure by petition is still retained.

SCHEDULES

Of the Schedules to the Act, which are eighteen in number, the First Schedule reproduces the new Tables A, C and E which were substituted for those Tables of the 1929 Act by the Companies (Articles of Association and Annual Return) Regulations, 1948 (S.I. 1948 No. 434), and the amendments effected in Tables D and E by the Companies (Articles of Association) Regulations, 1948 (S.I. 1948 No. 586). The most important change here is in the new Table A, which is a more comprehensive Table than that in the 1929 Act, and, apart from the amendments necessitated by the new provisions of the Act, incorporates many provisions which, while absent from the old Table A, were usually inserted in the articles of the better type of company. For the first time, the Table is divided into two Parts, Part II making special provision for private companies.

The Third, Fourth and Fifth Schedules have been amended as provided by the 1947 Act. The main changes therein have already been noted above.

The Sixth Schedule reproduces the corresponding Schedule of the 1929 Act, as amended by the Companies (Articles of Association and Annual Return) Regulations, 1948 (S.I. 1948 No. 434).

The Seventh Schedule reproduces the Third Schedule to the 1947 Act and sets out the conditions as to the interests in which shares or debentures may be held in an exempt private company, while the Eighth Schedule substantially reproduces the First Schedule to that Act and deals in considerable detail with the accounts required under the Act.

The Ninth Schedule, which reproduces the Second Schedule to the 1947 Act, sets out the matters which must expressly be stated in the auditors' report to the members of a company under section 162.

The Schedules above noted are those most worthy of note. The remaining Schedules either reproduce corresponding Schedules in the 1929 Act or the 1947 Act or make provision for other incidental details of the Act. Thus the Sixteenth Schedule deals with amendments of other Acts already amended by section 118 of the 1947 Act, while the Seventeenth Schedule sets out the repealed enactments, which include the whole of the 1929 Act and the greater part of the 1947 Act.

COMPANIES ACT, 1948

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An Act to consolidate the Companies Act, 1929, the Companies Act, 1947 (other than the provisions thereof relating to the registration of business names, bankruptcy and the prevention of fraud in connection with unit trusts), and certain other enactments amending the first-mentioned Act.

[30th June, 1948.]

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Memorandum of Association

1. Mode of forming incorporated company.—(1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”); or
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”); or

- (c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

NOTES

This section reproduces section 1 of the 1929 Act; cf. 1947 Act s. 122 (7) and Eighth Schedule thereto. The effect of the section is that any seven or more persons may form a public company and any two may form a private company, so long as it is for a lawful purpose. The section is not concerned with the purpose of the company, so long as it is lawful. The shares may be of the smallest nominal amount and a member need not hold more than one share. There is nothing to require the subscribers to be independent or unconnected, or to have a substantial interest. A company is a legal person separate and distinct from the individual members of the company (*Salomon v. Salomon & Co.*, [1897] A.C. 22, at pp. 42, 51; 9 Digest 34, 11). It is also a statutory corporation, as distinct from a common law corporation (*Ashbury Railway Carriage and Iron Co. v. Riche* (1875), L.R. 7 H.L. 653; 13 Digest 354, 922). *Prima facie* a company is within the meaning of the word "person" in a statute (Interpretation Act 1889 sections 2, 19; 18 Halsbury's Statutes 992, 1001).

Seven or more persons.—Cf. section 31 (reduction of number of members below legal minimum).

Subscribing their names to a memorandum.—The subscription by or on behalf of a person resident outside the scheduled territories may be invalid without the Treasury's permission, see Exchange Control Act, 1947, s. 8 (2).

Registration.—See section 12 (registration of memorandum and articles); sections 13, 15 (1) (certificate of incorporation); section 17 (name); section 15 (2) (statutory declaration); section 181 (4) (5) (list of persons consenting to be directors); section 425 and Twelfth Schedule (fees), also section 454; sections 382, 384 (companies not formed under this Act); and Stamp Act, 1891, s. 112 (16 Halsbury's Statutes 651), Finance Act, 1933, s. 41 (36 Halsbury's Statutes 676), as to statement of nominal capital. Companies incorporated outside Great Britain but establishing a place of business in Great Britain are subject to the special provisions of Part X of this Act; section 407 requires registration of documents.

Companies which cannot be registered under the Act.—Trade unions (Trade Union Act, 1871, section 5 (19 Halsbury's Statutes 640); see section 459 (9) (b), *post*); persons associated together for an unlawful purpose (see subsection (1), *supra*); companies expressly prohibited from registering (see section 382 (1) *provisos, post*). Registration of an unregistered company after the commencement of a winding up (cf. section 399 *post*) with a view to a voluntary winding-up is a mere nullity (*Re Hercules Insurance Co.* (1871), L.R. 11 Eq. 321, 323; 10 Digest 1094, 7664).

Private company.—See section 28; as to exempt private company, see section 129.

Company limited by shares.—See generally 5 Halsbury's Laws (2nd ed.) pp. 130 *et seq.*

Company limited by guarantee.—See generally *ibid.*, pp. 135 *et seq.*

Unlimited company.—See generally *ibid.*, pp. 139 *et seq.* As to charitable and other non-profit making companies having names excluding "limited", see section 19.

Definitions.—"Private company" (sections 28, 455 (1)); "member" (section 26); "company", "memorandum", "share" (section 455 (1)).

2. Requirements with respect to memorandum.—(1) The memorandum of every company must state—

- (a) the name of the company, with "limited" as the last word of the name in the case of a company limited by shares or by guarantee;
- (b) whether the registered office of the company is to be situate in England or in Scotland;
- (c) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;
- (b) no subscriber of the memorandum may take less than one share ;
- (c) each subscriber must write opposite to his name the number of shares he takes.

NOTES

The section reproduces section 2 of the 1929 Act.

Requirements.—The section sets out the matters which *must* be stated in the memorandum. Other provisions *may* be included, but, as these could lawfully be contained in the articles, they may, in general, be altered by special resolution (see section 23) ; for requirements as to articles see ss. 6–11.

It will be noted that, while subsection (1) applies to the memorandum of *any* company, special provision is made in the case of a company limited by shares (subsections (2), (4), *supra*), and for companies limited by guarantee (subsections (2), (3), *supra*).

For forms of memorandum, see section 11 and the First Schedule, Tables B, C, D, and E ; as to signature, see section 1 ; generally, as to memorandum, see sections 20 to 25.

Name of company.—See sections 17 to 19 (general provisions with regard to name) ; section 108 (publication of name) ; section 439 (penalty for use of word “ Limited ” by unincorporated persons). Section 58 of the 1947 Act (which remains in force) extends the provisions of the Registration of Business Names Act, 1916 (19 Halsbury’s Statutes 880), to companies ; see p. 448 *post* ; and the notes to that section in Magnus and Estrin on the Companies Act, 1947. See generally as to name, 5 Halsbury’s Laws (2nd edn.) pp. 145 *et seq.*

Registered office.—For other provisions relating to the registered office, see section 107 (every company to have a registered office) ; section 108 (affixing of company’s name outside registered office) ; section 437 (1) (service of documents at registered office). “ England ” includes Wales (Wales and Berwick Act, 1746, s. 3) (18 Halsbury’s Statutes 969).

Objects.—The memorandum should define and delimit the objects in such a manner that the whole field of industry within which the corporate activities of the company are to be confined can be identified (see *Cotman v. Brougham*, [1918] A.C. 514 ; 9 Digest 78, 286, where the requirements and scope of the objects clause are fully discussed). The company can only do what is within or incidental to the objects stated in the memorandum (*Ashbury Railway Carriage and Iron Co. v. Riche* (1875), L.R. 7 H.L. 653 ; 9 Digest 33, 6). As to alteration of objects, see section 5.

Share capital.—The memorandum need only state the amount of the share capital and its division into shares of a fixed amount. Its division into classes, etc. and the rights of the members in respect of their shares is more a matter for the article, (*Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361, C.A. ; 9 Digest 228, 1459).

Company limited by guarantee.—As to the memorandum and articles of a company limited by guarantee and not having a share capital, see section 21.

Charitable companies, etc.—As to including conditions and regulations if the description “ limited ” is dispensed with, see section 19 (3).

Definitions.—“ Company limited by guarantee ”, “ company limited by shares ” (sections 1 (2) ; 455 (1)) ; “ company ”, “ memorandum ”, “ share ” (section 455 (1)).

3. Stamp and signature of memorandum.—The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

NOTES

This section reproduces section 3 of the 1929 Act.

The deed stamp is 10s. (Stamp Act, 1891, section 1, 16 Halsbury’s Statutes 618). As to fees payable on registration, see section 425 and the Twelfth Schedule, *post* ; as to stamp duty on statement of capital, Stamp Act, 1891, s. 112 (16 Halsbury’s Statutes 651) ; Finance Act, 1933, s. 41 (26 Halsbury’s Statutes 676).

Definitions.—“ Memorandum ” (section 455 (1)). “ England ” includes Wales (Wales and Berwick Act, 1746, section 3 ; 18 Halsbury’s Statutes 969).

4. Restriction on alteration of memorandum.—A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

NOTES

The section reproduces section 4 of the 1929 Act. A distinction is now to be drawn between conditions which are required by the Act to be contained in the memorandum (see section 2, *ante*) and those which could lawfully have been contained in the articles and can therefore be varied by special resolution, (see section 23 (1)).

May not alter the conditions contained in its memorandum except in the cases.—For provisions authorising alteration of the memorandum, see sections 5, 23, 395 and 459 (9) (a) (alteration of objects); section 19 (alteration of name); sections 61, 66 and 206 (alterations of capital); section 203 (special resolution altering the memorandum making liability of directors unlimited); section 210 (alteration of memorandum in cases of oppression of minorities).

Alterations.—See section 22 (increasing liability to contribute; whether binding); section 25 (copies of memorandum to show alterations), and cf. section 69 (6).

Definitions.—"Company", "memorandum" (section 455 (1)).

5. Mode in which and extent to which objects of company may be altered.—(1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company; or
- (g) to amalgamate with any other company or body of persons:

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) An application under this section may be made—

- (a) by the holders of not less in the aggregate than fifteen per cent. in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen per cent. of the company's members; or
- (b) by the holders of not less than fifteen per cent. of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) An application under this section must be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before the first day of December, nineteen hundred and forty-seven, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(6) In the case of a company which is, by virtue of a licence from the Board of Trade, exempt from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Board of Trade as to members of the company.

(7) Where a company passes a resolution altering its objects—

(a) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and

(b) if such an application is made it shall—

(i) forthwith give notice of that fact to the registrar; and

(ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for the delivery of documents to the registrar under paragraph (b) of this subsection for such period as the court may think proper.

(8) If a company makes default in giving notice or delivering any document to the registrar of companies as required by the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine of ten pounds.

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing subsections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

(10) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the first day of December, nineteen hundred and forty-seven, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (9) thereof, there had been enacted therein the provisions of subsections (2) to (7) of section five of the Companies Act, 1929.

NOTES

This section combines section 5 of the 1929 Act and section 76 of the 1947 Act. The latter section first came into operation on December 1, 1947.

General Note.—The principal change from the law before December 1, 1947, is that an alteration of the memorandum need no longer be confirmed by the Court, unless there are objectors. The initiative in applying to the Court is left to the objectors,

who may apply within 21 days after the resolution altering the company's objects was passed (subsection (3)). The application may be made by such one or more of the persons coming within subsection (2) as the others may appoint in writing for the purpose (see subsection (3)), provided they are not persons who have consented to or voted in favour of the alteration (subsection (2)). The validity of an alteration cannot be questioned on the ground that it was not authorised by subsection (1) of this section after 21 days from the passing of the resolution (subsections (9) and (3)). The consequential alteration of the period within which a copy of the altered memorandum is to be delivered to the registrar to 15 days after the expiration of the 21 days will be noted (subsection 7 (a)). As to applications to the court (i) to extend time, see R.S.C. Order 53 B r. 8 (1); (ii) to cancel an alteration, see *ibid.* r. 5 (a), S.I. 1948 No. 1756.

Alteration to permit new business.—As to the need for showing a present intention immediately to carry on the new business, and as to conditions on inserting subsidiary objects, see *Re Brown (J.) & Co., Ltd.* (1914), 84 L.J. Ch. 245; 9 Digest 656, 4361; *Re Bolson Brothers* (1928), Ltd., [1935] 1 Ch. 413, 426, C.A.; Digest Supp.

Subsection (2) (b) : Debentures entitling the holders to object.—See subsection (5), *supra*.

Subsection (4) : Order confirming the alteration either wholly or in part.—For examples of partial confirmation, see *Re Spiers and Pond, Ltd.* (1895), 40 Sol. Jo. 32; 9 Digest 655, 4358; *Re Fleetwood Estate Co.* [1897] W.N. 20; 9 Digest 656, 4360; *Re Macfarlane, Strang & Co., Ltd.* [1915] S.C. 196; 9 Digest 652, 4320 ii; *North of Scotland and Orkney and Shetland Steam Navigation Co., Ltd.* (1920), 57 Sc.L.R. 689; 9 Digest 652, 4320 iv. As to the power of the Court to authorise an alteration although it affects a clause which is not technically an objects clause, see *Scottish Special Housing Association, Ltd.*, [1947] S.C. 17, Court of Session.

Subsection (6) : Board of Trade Licence.—See Section 19. Approval of the Board of Trade to the proposed alteration is no longer necessary, but notice of the resolution to effect the alteration must be given to the Board of Trade, who may then exercise their powers under section 19 (6).

Subsection (10).—The provisions of this section apply only in the case of a resolution passed after December 1, 1947 (i.e., the date when section 76 of the 1947 Act came into operation). Resolutions passed before that date must be confirmed by the Court in accordance with section 5 (2) to (7) of the 1929 Act.

Definitions.—"Company not limited by shares" (section 1 (2)); "member" (section 26); "special resolution" (section 141); "dissentient member" (cf. section 209, *post*; "dissenting shareholder"); "default fine" (section 440); "articles", "company", "the Court", "debenture", "document", "memorandum", "registrar of companies" (section 455 (1)). As to the meaning of "issued share capital" see note to section 66.

Articles of Association

6. Articles prescribing regulations for companies.—There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

NOTES

This section reproduces section 6 of the 1929 Act.

The memorandum of association of a company sets out, among other matters, the company's objects, and may only be altered as expressly provided by the Act (see section 4): the articles of association provide for the regulation and management of the company and may be altered by special resolution (see section 10); cf. sections 22 (increasing liability to contribute), 210 (protection of minorities; alteration restricted after court order).

Cross-references.—Section 8 (table A); section 11 (other forms); section 12 (registration); section 20 (effect of memorandum and articles); section 24 (copies).

Definitions.—"Company limited by shares," "company limited by guarantee", "unlimited company" (sections 1 (2), 455 (1)); "articles", "company", "memorandum", "share" (section 455 (1)); as to subscribing the memorandum, see section 1 (1).

7. Regulations required in case of unlimited company or company limited by guarantee.—(1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section combines section 7 of the 1929 Act and certain portions of section 81 (1) and (2) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The purpose of the new provisions is to provide for a new basis for the payment of fees on registration in the case of such companies. As to the fees payable, see section 425 and Twelfth Schedule, *post*.

Charitable Companies, etc.—As to including regulations by the Board of Trade if the description "limited" is dispensed with, see section 19 (3).

Definition.—"Company limited by guarantee", "unlimited company" (section 1 (2)); "member" (section 26) ; "default fine", "officer who is in default" (section 440) ; "articles", "officer", "registrar of companies" (section 455 (1)).

8. Adoption and application of Table A.—(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

NOTES

This section reproduces section 8 of the 1929 Act.

Table A.—See the First Schedule and section 455 (1), *post*. Provisions of Table A may be adopted in articles of association, but in the case of companies limited by shares and registered on or after July 1, 1948 (see section 462 (2) *post*) it is unnecessary expressly to adopt them as they are applied by subsection (2) *supra* ; if they are to be excluded or modified by other articles that are registered, the intention to exclude or modify should be clearly expressed ; consider *Fisher v. Black and White Publishing Co.*, [1901] 1 Ch. 174, 188, C.A. ; 9 Digest 602, 4021. Certain statutory powers only apply if conferred by the articles : see, e.g., sections 35 (foreign seal), 53 (1) (a) (underwriting commissions), 58 (redeemable preference shares), 59 (different amounts paid on shares), 61 (altering share capital), 65 (1) (b) (interest out of capital), and 66 (1) (reducing share capital), *post*. Statutory provisions may expressly override provisions of articles ; see, e.g., s. 75 (restriction on registering transfer) *post* : or render them void, see, e.g., section 21 (1) (participation in profits, guarantee company without share capital), section 205 (exempting company officers from liability). In preparing articles regard should also be had to Stock Exchange requirements.

Registration of articles.—See section 12 *post*.

Definitions.—"Company limited by shares" (sections 1 (2), 455 (1)) ; "articles", "share", "Table A" (section 455 (1)).

9. Printing, stamp, and signature of articles.—Articles must—

- (a) be printed ;
- (b) be divided into paragraphs numbered consecutively ;
- (c) bear the same stamp as if they were contained in a deed ;
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

NOTES

The section reproduces section 9 of the 1929 Act.

"Signed by each subscriber . . . one witness."—Cf. section 3, *ante*, as to subscribing the memorandum.

Deed stamp.—This is 10s. (Stamp Act, 1891, section 1 (16 Halsbury's Statutes 618)). As to fees on registration, see section 425 and the Twelfth Schedule, *post*.

"England" includes Wales (Wales and Berwick Act, 1746, section 3 (18 Halsbury's Statutes 969)).

Definitions.—"Articles" (section 455 (1)). As to subscribing the memorandum, see s. 1 (1) *ante*.

10. Alteration of articles by special resolution.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

NOTES

This section reproduces section 10 of the 1929 Act.

General Note.—A company cannot contract itself out of the power to alter its articles (*Malleson v. National Insurance and Guarantee Corporation*, [1894] 1 Ch. 200; 9 Digest 560, 3709; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361, C.A.; 9 Digest 558, 3695), even by the express terms of the articles (*Walker v. London Tramways Co.* (1879), 12 Ch. D. 705; 9 Digest 560, 3707). Directors cannot by resolution alter the articles (*De Ruwigne's Case* (1877), 5 Ch. D. 306, C.A.; 9 Digest 560, 3713) but an invalid alteration may form the basis of a contract as between the contracting parties (*Muirhead v. Forth and North Sea Steamboat Mutual Insurance Association*, [1894] A.C. 72; 9 Digest 562, 3728). A mistake in the articles can only be rectified by a special resolution under this section and will not be rectified by the Court (*Evans v. Chapman* (1902), 86 L.T. 381; 9 Digest 557, 3691). An alteration must be made *bona fide* for the benefit of the company as a whole (*Allen v. Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656, C.A., *per* Lindley, M.R., at p. 671; 9 Digest 558, 3693), and the Court will not allow the majority of the shareholders to benefit at the expense of the minority (*Brown v. British Abrasive Wheel Co.*, [1919] 1 Ch. 290; 9 Digest 559, 3702). Within these limitations, the articles can be freely altered and the Court will not readily interfere unless the alteration is of such a character that no reasonable man could have regarded it as made for the benefit of the company (*Shuttleworth v. Cox Brothers & Co. (Maidenhead), Ltd.*, [1927] 2 K.B. 9, C.A.; Digest Supp.).

The articles may provide for power to acquire compulsorily shares from members in certain circumstances, for example, they may confer the right to expropriate any member who enters into a business competitive with that of the company (see *Sidebottom v. Kershaw, Leese & Co.*, [1920] 1 Ch. 154, C.A.; 9 Digest 559, 3704), or they may impose a restriction on transfer to members of the company or their family, the shares in question being transferable at a fair value determinable (for instance) by the auditor to the company. The articles may also confer the power to enforce a transfer by a specified majority of shareholders.

Subject to the provisions of this Act.—The provisions of sections 7, 9 and 11, where liable, must be complied with. See also section 21 (provisions in articles of company limited by guarantee dividing capital into shares); section 22 (alterations increasing liability of members to contribute to share capital); section 137 (right to demand a poll); section 205 (avoidance of provisions in articles relieving officers from liability); section 210 (alteration by order of Court in cases of oppression of minorities); section 380 (extension of this section to regulations of unlimited companies under the Joint Stock Companies Acts); section 455 (4) (effect of overriding or interpretative provisions).

Conditions contained in memorandum.—As to varying these, see section 23.

Altering Table A, etc.—For Board of Trade's power, see section 454.

Definitions.—"Special resolution" (section 141 (2)); "articles", "company", "memorandum" (section 455 (1)).

Form of Memorandum and Articles

11. Statutory forms of memorandum and articles.—The form of—

- (a) the memorandum of association of a company limited by shares;
- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;
- (c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(d) the memorandum and articles of association of an unlimited company having a share capital ; shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule to this Act, or as near thereto as circumstances admit.

NOTES

This section reproduces section 11 of the 1929 Act.

Memorandum of association.—For requirements as to contents, see section 2, stamp and signature, section 3 ; as to alterations, see sections 4, 5, 23.

Articles of association.—For requirements as to contents, see section 7, stamp and signature, etc., section 9 ; as to Table A, see section 8, and as to altering articles, see section 10.

Definitions.—" Company limited by shares ", " company limited by guarantee ", " unlimited company " (section 1 (2)) ; " articles ", " company ", " memorandum ", " share " (section 455 (1)).

Registration

12. Registration of memorandum and articles.—The memorandum and the articles, if any, shall be delivered to the registrar of companies for England or the registrar of companies for Scotland according as the registered office of the company is stated by the memorandum to be situate in England or Scotland, and the registrar shall retain and register them.

NOTES

The section reproduces section 12 of the 1929 Act.

Articles (if any).—A company limited by shares need not have articles (section 6) but Table A will then apply (section 8 (2)).

" Shall retain and register."—Any association of persons of the requisite number may apply for registration (section 1) and the Registrar is then only concerned to see that the requirements of the Act have been complied with. If they have been complied with, it is the registrar's duty to retain and register the memorandum and any articles and to give a certificate of incorporation in accordance with section 13 (1), and the fulfilment of this duty has been enforced by *mandamus* ; see *R. v. Companies' Registrar, Ex parte Bowen*, [1914] 3 K.B. 1161, 1167 ; 9 Digest 64, 192. Principal requirements for the Registrar's consideration are those of sections 1 (e.g. lawful purpose, as to which see *R. v. Joint Stock Companies' Registrar, Ex parte More*, [1931] 2 K.B. 197, C.A. ; Digest Supp.) ; 2, 3 (memorandum) ; 6, 7, 9 (articles) ; 17 (name). In deciding, the Registrar has a discretion with the exercise of which, if uninfluenced by extraneous considerations and based on no wrong principle of law, the Court will not interfere (*R. v. Companies' Registrar*, [1912] 3 K.B. 23, 24 ; 9 Digest 67, 222). Evidence of compliance with the requirements of the Act is by the solicitor's statutory declaration (section 15 (2)). As to fees, see section 425 and Twelfth Schedule, and section 454. As to proceedings for *mandamus* see Encyclopaedia of Court Forms, Vol. 10, title King's Bench Division (Crown Side).

After registration, any person dealing with the company will be presumed to have knowledge of the memorandum (*Royal British Bank v. Turquand* (1856), 6 E. & B. 327 ; 9 Digest 97, 406).

Inspection of Copies.—Any person may inspect the documents kept by the registrar on payment of a prescribed fee (section 426), and any member may require the company to send him a copy of the memorandum and articles, for which a charge may be made (section 24).

Overseas companies.—As to documents to be registered by overseas companies carrying on business in Great Britain, see section 407, and as to alterations to such documents, see section 409.

Companies not formed under the Act.—See, as to registration, section 382 *et seq.*

Registered Office.—See section 107, *post*.

Definitions.—" Articles ", " memorandum ", " registrar of companies " (section 455).

13. Effect of registration.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other

persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

NOTES

The section reproduces section 13 of the 1929 Act.

For the position upon an application for registration under the Act, see notes to section 12. As to the conclusiveness of the certificate, see section 10 (1); as to commencement of business, see section 109.

Body corporate.—A body corporate is a distinct legal entity from the persons composing it (see *Salomon v. Salomon & Co.*, referred to in note to section 1, *ante*), and assets transferred by the partners of a firm to a body corporate of which the same partners are now the shareholders, is a transfer to a distinct body (see *Ryhope Coal Co., Ltd. v. Foyer* (1881), 7 Q.B.D. 485; 28 Digest 40, 208). The transfer is a conveyance on sale on which *ad valorem* stamp duty is payable (*Foster (John) & Sons v. Inland Revenue Commissioners*, [1894] 1 Q.B. 516; 9 Digest 35, 18). A body corporate is English even though all its corporators are foreigners (*Re General Co. for Promotion of Land Credit* (1870), 5 Ch. App. 363; affirmed *sub nom. Reuss (Princess) v. Bos* (1871), L.R. 5 H.L. 176; 9 Digest 76, 277; a body corporate cannot be guilty of such criminal offences as treason, felony, perjury, or offences against the person (*Metropolitan Bank v. Pooley* (1885), 10 App. Cas. 210, H.L.; 13 Digest 407, 1280), although the individuals comprising it may be (*R. v. Cory Brothers & Co.*, [1927] 1 K.B. 810; Digest Supp.). It is, however, liable for a breach of statutory duty unless expressly exempted by the Statute (*R. v. Cory Brothers & Co.*, *supra*, at p. 817). As to criminal liability imposed on a company under the Act, see generally 5 Halsbury's Laws (2nd edn.), pp. 434 *et seq.*, and sections 438 to 446.

Common Seal.—Every company must have a common seal. As to the use of the seal, see section 32 (contracts); section 35 (seal for use abroad); section 108 (name engraved on seal). Where particular formalities are not prescribed by the Act or by the memorandum or articles, whoever in practice manages the affairs of the company may use the seal for those acts which he is authorised to perform (*Re Barned's Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. App. 105, at p. 116; 9 Digest 608, 4054).

Liability in winding up.—As to the liability of members in winding up, see sections 212 to 217.

Definitions.—"Limited company" (section 1); "subscribers of the memorandum"; "member" (section 26); "company", "memorandum" (section 455 (1)); "body corporate" (section 455 (3)).

14. Power of company to hold lands.—(1) A company incorporated under this Act shall have power to hold lands, and as regards lands in any part of the United Kingdom without licence in mortmain:

Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land, but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

(2) A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit.

NOTES

The section reproduces section 14 of the 1929 Act.

For the form of licence, see the Second Schedule. For other provisions dealing with such bodies, see section 5 (6) (alteration of objects); section 19 (power to dispense with "limited" in name of such company).

Licence in mortmain.—See the Mortmain and Charitable Uses Act, 1888; 2 Halsbury's Statutes 385. The Act provides for a forfeiture to the Crown of land which is granted to a corporation without a licence from the Crown (i.e., "licence in mortmain") or the authority of a statute. This section gives the statutory authority to trading companies to hold land, but limits the authority in relation to charitable and other companies having objects not invoking the acquisition of gain.

Acquisition of gain.—"Gain" does not necessarily mean commercial profit or pecuniary gain; an indemnity against loss in carrying on trade is gain (*Re Padstow Total Loss and Collision Assurance Association* (1882), 20 Ch. D. 137, C.A.; 9 Digest 74, 266. See further note to section 434).

United Kingdom.—United Kingdom is defined by the Royal and Parliamentary Titles Act, 1927, section 2 (3 Halsbury's Statutes 191) (unless the context otherwise provides) as Great Britain and Northern Ireland. A company registered in Northern Ireland has power to hold land (section 408, *post*). See also section 461 (application of provisions of the Companies Act, 1948, to Northern Ireland).

As to companies incorporated outside Great Britain but with places of business within Great Britain, see sections 406 to 408.

15. Conclusiveness of certificate of incorporation.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the Supreme Court, and in Scotland by a solicitor, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

NOTES

The section reproduces section 15 of the 1929 Act, extended to refer to provisions of the 1947 Act as well as of the 1929 Act, (1947 Act s. 122 (7) and Eighth Schedule). The conclusiveness of the certificate extends only to the question whether all the requirements of the Act in respect of registration and matters precedent and incidental thereto have been complied with "and that the association is a company authorised to be registered and duly registered under this Act". It is not conclusive that all the objects of the company are legal. If they are not legal, it would appear that *certiorari* would lie at the instance of the Attorney-General to have the registration cancelled (*Bowman v. Secular Society Ltd.*, [1917] A.C. 406, *per* Lord Parker of Waddington, at pp. 439, 440; 9 Digest 81, 310. See also *Cotman v. Brougham*, [1918] A.C. 514, at p. 519; 9 Digest 78, 286). The certificate is also conclusive evidence that the company was formed on the day mentioned in the certificate (*Jubilee Cotton Mills, Ltd. (Official Receiver and Liquidator) v. Lewis*, [1924] A.C. 958; Digest Supp.).

A certified copy of the certificate is admissible in evidence in legal proceedings (see section 426 (3)). As against the company itself, registration may be evidenced by other means, e.g., by producing its sealed share certificate (*Mostyn v. Calcott Hall Mining Co.* (1858), 1F. & F. 334; 9 Digest 78, 288).

Company authorised to be registered.—See *McGlade v. Royal London Mutual Insurance Society, Ltd.*, [1910] 2 Ch. 169, C.A.; 9 Digest 81, 312.

Requirements of this Act.—See notes to section 12.

Statutory declaration.—The declaration is obligatory and *must* be produced to the Registrar. The Registrar *may* accept the declaration as sufficient evidence of compliance, but need not do so, if he is, in fact, not satisfied that the necessary requirements have been complied with. The term "solicitor" in the case of Scotland is here substituted for "enrolled law agent" in the corresponding provision of the 1929 Act, in consequence of the Solicitors (Scotland) Act, 1933, which directed that the term "solicitor" be substituted for "law agent" in any statute in which that term occurs.

Director or secretary.—See sections, 176, 177.

Definitions.—"Certificate of incorporation" (section 13 (1)); "company", "director", "registrar" (section 455 (1)).

16. Registration of unlimited company as limited.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

NOTES

The section reproduces section 16 of the 1929 Act, with the substitution of a reference to Part VIII of this Act for the reference in the 1929 Act to Part IX of that Act.

In the case of a company already registered as limited, re-registration may be necessary to enable a company limited by guarantee to register as a company limited by shares and *vice versa*, or to alter the situation in Great Britain of the company's registered office.

Subject to the provisions of this section.—I.e., in the case of an unlimited company, without prejudice to existing liabilities. As to the effect of re-registration, see subsection (2), *supra*.

Part VIII.—See sections 382 to 397. As to the saving and enforcement of existing rights and liabilities, see sections 392, 393.

First registration of the company.—See sections 12 to 15.

As to the majority required for the resolution to re-register, see section 382 (1) (vi). As to the application of the Act to unlimited companies re-registered under former Acts, see section 379. See also sections 64 (provision for reserve share capital on re-registration); section 381 (exclusion of companies registered in Northern Ireland and Eire) and section 430 (banking companies).

Definitions.—“Limited company”, “unlimited company” (section 1 (2)); “company”, “document”, “registrar” (section 455 (1)).

Provisions with respect to Names of Companies

17. Prohibition of registration of companies by undesirable names.—No company shall be registered by a name which in the opinion of the Board of Trade is undesirable.

NOTES

The section reproduces section 78 (1) of the 1947 Act. The section came into force on December 1, 1947.

This provision supersedes section 17 of the 1929 Act, which prohibited a company being registered with a name identical with that of an existing company or so nearly resembling it as to be calculated to deceive, and sets out specific words which a company could not include in its name either at all or without the permission of the Board of Trade. As to the Board of Trade's powers in case of similarity in companies' names, see section 18 (2), *post*; as to the position on registration, see notes to section 12.

Definition.—“Company” (section 455 (1)).

18. Change of name.—(1) A company may by special resolution and with the approval of the Board of Trade signified in writing change its name.

(2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Board of Trade, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Board of Trade and, if they so direct within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Board may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) Where a company changes its name under this section, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(4) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

NOTES

This section combines section 19 of the 1929 Act, except subsection (3) of that section, and section 78 (2) of the 1947 Act. The latter provision came into force on December 1, 1947.

The Board of Trade is given power by subsection (2) to direct that a company's name be changed if it is, in the opinion of the Board, too like that of a previously existing company. As to dispensing with the word "limited" and revocation of licence to use the description "Chamber of Commerce" see section 19 (1) (7). A company using any business name other than by which it is registered is required to register under the Registration of Business Names Act, 1916 (19 Halsbury's Statutes 880), (section 58 of the 1947 Act, *post*, which remains in force). See also Business Names Rules, 1948 (S.I. 1948, No. 678).

Subsection (1).—As to action by the Registrar upon change of name, see subsection (3), *supra*. The change is not complete until it has been made on the register and the new certificate has been issued. (*Shackleford, Ford & Co. v. Dangerfield* (1868), L.R. 3 C.P. 407, at p. 411; 9 Digest 71, 244). If, after the issue of the certificate, it is found that the special resolution was not duly passed, application may be made to the Registrar to vacate the registration (*Re Australasian Mining Co.*, [1893] W.N. 74; 9 Digest 71, 245).

Subsection (2).—The provision which this subsection replaces authorised a company to change its name in certain circumstances, but contained no provision to compel the company to do so, the only remedy, if the company refused, being by a "passing-off" action. Registration with a name too like that of an existing company should not be allowed (see section 17); this subsection provides for inadvertent or other errors by permitting such registration.

Change of name by direction of Court.—On an application by objectors under section 5, the Court may make such orders as it thinks fit (see section 5 (4)), and, as a condition of confirming an alteration in objects, may require that the company change its name to make it accord with its objects as altered (see e.g., *Re National Boiler Insurance Co.*, [1892] 1 Ch. 306; 9 Digest 655, 4353).

As to a change of name by a company licensed by the Board of Trade to dispense with the word "limited" in its name, see section 19 (2).

Certificate of incorporation.—Compare sections 13 (1), 15 (1).

Fines.—Application, see section 444.

Definitions.—"Special resolution" (section 141 (2)); "company", "existing company", "registrar" (section 455 (1)).

19. Power to dispense with "limited" in name of charitable and other companies.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Board of Trade—

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in the foregoing subsection and to objects incidental or conducive thereto; and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Board may by licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the

word "limited", and subsections (3) and (4) of the last foregoing section shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1) of this section) shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the registrar of companies.

(5) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "limited" at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Board shall give to the body notice in writing of their intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Board of Trade may (unless they see fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Board think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" is revoked, the body shall, within a period of six weeks from the date of revocation or such longer period as the Board of Trade may think fit to allow, change its name to a name which does not contain those words, and—

- (a) the notice to be given under the proviso to subsection (5) of this section to that body shall include a statement of the effect of the foregoing provisions of this subsection; and
- (b) subsections (3) and (4) of the last foregoing section shall apply to a change of name under this subsection as they apply to a change of name under that section.

If the body makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

NOTES

The section combines sections 18 and 19 (3) to (5) of the 1929 Act and sections 76 (7) and 79 of the 1947 Act. The last two provisions came into force on December 1, 1947.

Effect of changes.—Apart from the general power of the Board of Trade to grant a revocable licence to a company about to be formed, coming within subsection (1), to dispense with the word "limited" in its name on incorporation, the Board may also by revocable licence authorise an existing limited company with like objects to omit the word "limited" or otherwise to change its name by special resolution (subsection (2)). If the company, while the licence is in force alters its objects (see section 5), the Board of Trade may impose new terms for continuing the licence or vary the terms on which it was given (subsection (6)).

Science . . . charity.—These expressions are not to be confined to their narrow meanings but must be construed according to their legal and technical meanings (see *Inland Revenue Commissioners v. Forrest* (1890), 15 App. Cas. 334, H.L.; 32 Digest 551, 5 ("science" includes mechanical or engineering science); *Income Tax Special Purposes Commissioners v. Pemsel*, [1891] A.C. 531, H.L.; 8 Digest 241, 1 ("charity" not confined to affording relief from poverty) and, as to the essentiality of public benefit as an element of any purpose charitable in law, see *Re Compton, Powell v. Compton*, [1945] Ch. 123, 129; [1945] 1 All E.R. 198, 201, C.A.; 2nd Digest Supp.).

Subsection (2).—A licence authorising a change of name by special resolution may be granted where two things are proved to the satisfaction of the Board of Trade :— (1) that the company comes within subsection (1) ; and

(2) its constitution requires all its income to be applied in promoting its objects and prohibits the payment of dividends. As to the consequences of an alteration, see subsection (6), *supra*. A licence under this subsection, as well as one under subsection (1), may at any time be revoked by the Board of Trade (see subsection (5), *supra*). This subsection reproduces in substance section 79 of the 1947 Act.

Registered under this Act as a limited company.—Cf. sections 12 to 16

Subsections (3)–(5) : Licence under this section.—I.e., under either subsection (1) or subsection (2). The licence normally prohibits the payment of dividends to the members of the company and requires the memorandum to provide that in case of liquidation the surplus assets should be given to some other institution having similar objects. Restrictions are usually imposed on the dealing before winding up with property which is subject to the jurisdiction of the Charity Commissioners and a draft of the memorandum and articles is required to be submitted for consideration by counsel for the Board, whose fee is paid by the applicant. As to application for licence see *Encyclopaedia of Forms and Precedents*, Vol. 4, p. 20, Form No. 6.

Body.—The word “body” used in subsections (3) to (7), *supra*, is in substitution for “association” used in the corresponding provision of the 1929 Act to meet the case of a licence granted to an existing company under subsection (2), *supra*, in which case the term “association” is inappropriate.

Subsection (6).—This subsection reproduces in substance section 76 (7) of the 1947 Act. It has been held under previous Acts that where a company was exempt from using the word “limited” as a part of its name, the approval of the Board of Trade had to be obtained to the proposed alteration (see *Re St. Hilda's Incorporated College, Cheltenham*, [1901] 1 Ch. 556 ; 9 Digest 656, 4364). Such approval is not now necessary, but notice of the resolution must be given to the Board of Trade (see section 5 (6)), who, in the light of the nature of the alteration may, if they think fit, revoke the licence, or may impose other conditions in addition to or in lieu of those originally attached to the licence. Subject to this power of the Board, the alteration remains valid, whether approved by the Board or not.

Subsection (7).—This subsection re-enacts in substance the provisions of sections 18 (5) and 19 (3) of the 1929 Act, applying those provisions, however, not only to a licence granted under subsection (1), *supra*, but also to one granted under subsection (2).

Definitions.—“Company with limited liability,” “limited company” (section 1 (2)) ; “member” (section 26) ; “special resolution” (section 141 (2)) ; “articles”, “company”, “memorandum”, “registrar” (section 455 (1)).

General Provisions with respect to Memorandum and Articles

20. Effect of memorandum and articles.—(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England be of the nature of a specialty debt.

NOTES

The section reproduces section 20 of the 1929 Act.

The effect of the section is that the memorandum and articles constitute a contract between the company and its members as such (*Hickman v. Kent or Romney Marsh Sheepbreeders' Association*, [1915] 1 Ch. 881 ; 9 Digest 86, 341), but not between the directors as such and the members as such (*Beattie v. Beattie, Ltd.*, [1938] Ch. 708 ; [1938] 3 All E.R. 214, C.A. ; Digest Supp.), nor between the company and a member in his capacity as a solicitor (*Eley v. Positive Government Security Life Assurance Co.* (1876), 1 Ex. D. 88, C.A. ; 9 Digest 88, 351).

The articles are subordinate to the memorandum and in the case of inconsistency between them, the memorandum prevails (*Ashbury v. Watson* (1885), 30 Ch. D. 376, C.A. ; 9 Digest 85, 338), the memorandum being the charter of the company and defining its powers, while the articles play a subsidiary part, and define the duties, rights, and powers of the governing body as between themselves and the company at large (*ibid.*). See generally 5 Halsbury's Laws (2nd Edn., page 140 to 143).

Specialty Debt.—The period of limitation is twelve years (Limitation Act, 1939, section 2 (3) ; 32 Halsbury's Statutes 226).

Articles relieving from liability.—See section 205, for avoidance of provisions exempting officers and auditors from liability for negligence or breach of trust.

Definitions.—“Member” (section 26) ; “articles”, “company”, “memorandum” (section 455 (1)).

21. Provision as to memorandum and articles of companies limited by guarantee.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

NOTES

The section reproduces section 21 of the 1929 Act.

Subsection (2) of the section is directed against the decision in *Malleson v. General Mineral Patents Syndicate, Ltd.*, [1894] 3 Ch. 538; 9 Digest 609, 4055. There a company limited by guarantee and not having a share capital, registered before January 1, 1901, by special resolution divided its undertaking into a specified number of shares and interests of no defined or fixed monetary amount, each share or interest being merely a certain proportion of the whole undertaking. This method of achieving share capital divided into shares of no par value is prevented. As to a member's liability to contribute to the assets of the company in the event of its being wound up, see section 2 (3).

Provisions relating to memorandum of guarantee company.—See section 2, (requirements of memorandum); section 11, First Schedule, Tables C, D (forms of memorandum); section 61 (power to alter memorandum with regard to share capital); sections 202, 203 (power to make liability of directors unlimited). For general provisions as to the memorandum, see notes to section 2. As to the effect of the share capital on fees payable on registration, see Twelfth Schedule; as to number of members, *ibid.*, and cf. section 7 (2) (3).

Definitions.—"Company limited by guarantee" (section 1 (2)); "member" (section 26); "articles", "company", "memorandum", "share" (section 455 (1)).

22. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.—Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

NOTES

The section reproduces section 22 of the 1929 Act.

The section was first introduced by the 1929 Act to remove a doubt created by the terms of the Industrial and Provident Societies Act, 1893, section 22 (9 Halsbury's Statutes 733) (removed, in the case of industrial societies by the Industrial and Provident Societies (Amendment) Act, 1928; 9 Halsbury's Statutes 770), as to which, see *Re Wills and Somerset Farmers, Ltd.*, [1929] 1 Ch. 321, C.A.; reversed *sub nom. Hole v. Garnsey*, [1930] A.C. 472; Digest Supp.

Alteration of memorandum.—See sections 4, 5, 23.

Alteration of articles.—See section 10.

Definitions.—"Member" (section 26); "articles", "company", "memorandum", "share" (section 455 (1)).

23. Power to alter conditions in memorandum which could have been contained in articles.—(1) Subject to the provisions of the last foregoing section and of section two hundred and ten of this Act, any

condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution :

Provided that if an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (2), (3), (4), (7) and (8) of section five of this Act (except paragraph (b) of the said subsection (2)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

NOTES

The section corresponds with section 77 of the 1947 Act. That section first came into operation on December 1, 1947.

Effect of section.—A condition in the memorandum of a company whenever registered (subsection (4) *supra*) may be altered by special resolution if (i) it could lawfully have been contained in the articles, (ii) the alteration is not prohibited by section 210 (3), and (iii) the memorandum neither provides for the alteration nor prohibits it ; but the alteration will not bind members to increased liability to contribute to share capital without their written consents (section 22), nor, if application is made to the court for cancellation, will the alteration be effective without the court's confirmation. Such applications to the Court are governed by subsections (2) (a), but not (b), (3), (4), (7) and (8) of section 5 (see subsection (3), *supra*). The alteration is valid without the Court's confirmation, if no application for cancellation is made. Debenture holders may not join in the application as section 5 (2) (b), does not apply, nor, in consequence, does subsection (5) thereof ; the Board of Trade need not be notified, as *ibid.*, subsection (6) does not apply ; *ibid.*, subsection (9) is not relevant to application under this section, and that subsection, too, does not apply to this section. The application to cancel is by petition, R.S.C. Order 53 B r. 5 (c), S.I. 1948 No. 1756.

Section 210.—Subsection (3) prevents a company making alterations inconsistent with a modification of a memorandum or articles made by the Court under that section, i.e., for the protection of minorities.

Lawfully have been continued in articles.—As to the contents of articles, see section 8 of Table A in First Schedule, cf. section 7 ; as to what must be stated in the memorandum, see section 2.

Commencement of this Act.—The Act came into force on July 1, 1948 (section 462 (2)).

Definitions.—" Member " (section 26) ; " special resolution " (section 141 (2)) ; " articles of association ", " company ", " memorandum ", " the Court " (section 455 (1)).

24. Copies of memorandum and articles to be given to members.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding one pound.

NOTES

The section reproduces section 23 of the 1929 Act.

Definitions.—" Member " (section 26) ; " officer who is in default " (section 440 (2)) ; " company ", " memorandum ", " articles ", " officer " (section 455 (1)).

25. Issued copies of memorandum to embody alterations.—(1)

Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding one pound for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

NOTES

The section reproduces section 24 of the 1929 Act. As to alterations of the memorandum, see sections 4, 5, 23, see also section 69 (6).

Definitions.—"Officer in default" (section 440 (2)); "company", "memorandum", "officer" (section 455 (1)).

Membership of Company

26. Definition of member.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

NOTES

The section reproduces section 25 of the 1929 Act.

Only those who agree to become members can be members of a company, and they do not so become until they are entered in the register of members (subsection (2), *supra*). The subscribers of the memorandum are deemed so to have agreed (subsection (1), *supra*). The subscribers are, in fact, the first members, and together with those who subsequently become members, are a body corporate from the date of registration of the company (see section 13 (2), *ante*). As to the effect of the Exchange Control Act, 1947, see *ibid.*, section 8 (2).

A member is not necessarily a shareholder: a company limited by guarantee or an unlimited company can exist without a share capital (*Re South London Fish Market Co.* (1888), 39 Ch. D. 324, C.A.; 10 Digest 1094, 7669).

Subscribers to be entered in register of members.—Neither this entry nor any allotment of shares is a condition precedent to their becoming members (*Evans' Case* (1867), 2 Ch. App. 427, and other cases cited in 9 Digest 94 *et seq.*).

Directors.—A person who has signed and delivered to the registrar an undertaking to take qualification shares is in the same position as a subscriber to the memorandum, see section 181 (2).

Agreement to become a member.—No particular form of agreement is required (*Ritso's Case* (1877), 4 Ch. D. 774, C.A.; 9 Digest 276, 1696). The ordinary law of contract applies (*Re New Theatre Co., Ltd.*, *Bloxam's Case* (1864), 4 De G. J. & Son, 447; 9 Digest 277, 1706).

See further 5 Halsbury's Laws (2nd edn.), pp. 220 *et seq.*; Buckley on the Companies Acts (11th edn.), notes to section 25 of the 1929 Act.

As to members as contributories, see sections 212, 213, *post*.

Definitions.—"Register of members" (section 110); "company" (section 455 (1)): as to subscribing the memorandum, see section 1 (1).

27. Membership of holding company.—(1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to the last foregoing subsection, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2) of this section, subsections (1) and (3) thereof shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

NOTES

This section reproduces section 80 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that a subsidiary or its nominee, which is not already a member of its holding company cannot in future become a member thereof, except as a personal representative or trustee. In the latter case, neither the holding company nor the subsidiary may have any beneficial interest under the trust, except by way of security for the purpose of a transaction entered into in the ordinary course of a business which includes the lending of money. Where a subsidiary is already a member of its holding company, it will have no voting rights in the holding company except in so far as the subsidiary is concerned as personal representative or trustee under subsection (2), *supra*. Any allotment or transfer of shares or equivalent interest by a holding company to its subsidiary is void. For prohibition of provision by a subsidiary of financial assistance to purchase the shares of its holding company, see section 54. In the case of a holding company which is a company limited by guarantee or an unlimited company, the reference to shares is to be construed as a reference to the interest of its members as such, whatever the form of that interest (see subsection (5), *supra*).

Commencement of this Act.—The Act came into force on July 1, 1948 (see section 462 (2)).

Definitions.—"Company limited by guarantee", "unlimited company" (section 1 (2)); "member" (section 26); "holding company", "subsidiary" (section 154); "company", "share" (section 455 (1)); "body corporate" (section 455 (3)).

Private Companies

28. Meaning of "private company".—(1) For the purposes of this Act, the expression "private company" means a company which by its articles—

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

NOTES

The section reproduces section 26 of the 1929 Act.

Some changes have, however, been introduced in this Act as to the requirements for a private company. The more important are the following:—

1929 Act

It must consist of at least two members (section 1).

Provisions as to liability where business is carried on with fewer than two members (section 28).

It must include in its articles the conditions of this section (section 26 of the 1929 Act).

General meeting to be held annually, as well as one in the year of incorporation.

Seven days' notice required for calling a general meeting unless the articles provided otherwise (section 115 of 1929 Act).

Annual return not required to include the balance sheet, auditors' report and other documents mentioned in section 110 (3).

Certificate to be sent by a private company with annual return under *ibid.*, section 111.

Requirements as to statutory meeting and statutory report under *ibid.*, section 113 were not applicable.

Prohibition under section 36 as to alteration of contracts not applicable.

It need not have two directors (*ibid.*, section 139).

Restrictions as to appointment of directors and requirements as to persons who consented to act as such to be filed with registrar not applicable (*ibid.*, section 140).

Certain privileges as to the auditors (*ibid.*, section 133).

Statement in lieu of prospectus need not be filed with registrar (section 40 (1)).

Not required to obtain a certificate entitling it to commence business (section 94 (7) (a)).

Not required to supply balance sheets to members, except upon request and payment of a fee (*ibid.*, section 130 (2)).

Special provision for voluntary winding up (*ibid.*, section 225).

Special provisions as to winding up by court (*ibid.*, section 168).

Winding up under supervision of court (*ibid.*, section 211).

Provisions applicable to a creditor's voluntary winding up (*ibid.*, section 237).

1948 Act

No change (section 1).

No change (section 31).

No change (section 28), but note the amendment as to failure to comply with those conditions (section 29) and see now Table A, Part II.

Annual general meeting made statutory, must be held each year and notices calling it must specify the meeting as such. The first annual general meeting may be held within 18 months of incorporation (*ibid.*). For default in holding such meetings and the powers of the Board of Trade with respect thereto, and generally the provisions of this Act relating to annual general meetings, see section 131.

Twenty-one days' notice now required for an annual general meeting and 14 days for other general meetings (section 133).

Exception as to annual return (section 124) and documents to be annexed thereto (section 127) now only made in the case of an exempt private company (section 129). All other private companies must, therefore, in future include such documents with the annual return just like a public company.

The certificate must now be signed both by a director and by the secretary (section 128).

No change (section 130 (10)).

No change (section 42).

Every private company must have a director (section 176) and a sole director may not also be secretary (section 177).

No change (section 181 (5)).

Partner or employee of officer or servant of the company cannot be auditor of a private company (section 161 (2)). Only qualified persons may act as auditors (*ibid.*). This does not apply to an exempt private company (*ibid.*).

No change (section 48 (3)).

No change (section 109 (7) (a)).

Every member and debenture holder is entitled to receive the annual accounts (including documents required by law to be annexed (section 158). Default fine imposed for default (*ibid.*).

No change (section 278), but see also "declaration of solvency" (section 283), and generally sections 301 to 310.

No change (section 222).

See sections 311 to 314 which introduce some amendments to the 1929 Act.

See sections 292 to 300 which introduce some modifications to the 1929 Act.

Memorandum.—The memorandum (as in the case of a public company) must state the objects (see section 2, *ante*).

Conversion to a public company.—See generally, section 30. Those provisions contemplate the case of a company which, having been formed as a private company, desires to invite the public to subscribe for further capital.

Formation of a private company.—See generally, sections 1 to 15.

Classes of private company.—The requirements of the Act vary. For example, contrast and compare where there is and is not a share capital and limitation of liability by (a) shares, or (b) guarantee (as to which see generally, sections 2, 6, 7, 8, 11, 21, 61, 66, and 212).

29. Consequences of default in complying with conditions constituting a company a private company.—Where the articles of a company include the provisions which, under the last foregoing section, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section thirty-one, subsection (1) of section one hundred and twenty-nine, paragraph (d) of section two hundred and twenty-two and paragraph (i) of proviso (a) to subsection (1) of section two hundred and twenty-four of this Act, and thereupon the provisions contained in the first, third and fourth of those enactments shall apply to the company as if it were not a private company and the provisions contained in the second of those enactments shall cease to apply to the company :

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

NOTES

The section corresponds with section 27 (3) of the 1929 Act, as amended by section 96 (2) of the 1947 Act, which came into force on July 1, 1948.

Cessation of privileges.—As to the privileges, see notes to section 28. This provision was first introduced by section 1 (1) of the 1913 Act, overriding the decision in *Park v. Royalties Syndicate, Ltd.*, [1912] 1 K.B. 330 ; 9 Digest 36, 25, where it was decided that a company remained a private company even though the restrictions were not in fact complied with. The application for relief under the proviso *supra* is by motion, R.S.C. Order 53B r. 7 (b), S.I. 1948 No. 1756.

Exempt private company.—See section 129.

Change by 1947 Act.—An anomaly remained under the provisions of section 27 (3) of the 1929 Act, in that, although a company in default no longer ranked as a private company, a petition for winding up could not be presented by a member until he was the sole remaining member of the company (see sections 222, 224, *post*). Section 96 (2) of the 1947 Act removed this anomaly by providing that such a petition could be presented where the number of members fell below seven, as in the case of a public company. This amendment has now been incorporated in this section.

Definitions.—" Private company " (section 28) ; " articles ", " company ", " the Court " (section 455 (1)).

30. Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.—(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section twenty-eight of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule :

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section thirty-nine of this Act to comply, with the Fourth Schedule to this Act, is issued and is delivered to the registrar of companies as required by section forty-one of this Act.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Third Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) If default is made in complying with subsection (1) or (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

(4) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both ; or

(b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both ;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(5) For the purposes of this section—

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

NOTES

The section combines section 27 (1) (2) of the 1929 Act, and section 67 and 68 (3) (4) of the 1947 Act. The two last-mentioned sections came into force on July 1, 1948.

The effect of the section is that where a company, by omitting from its articles the provisions of section 28, *ante*, ceases to be a private company, it must deliver a statement in lieu of prospectus to the Registrar for registration within fourteen days of the alteration. Such statement may be dispensed with if, within the period allowed for such registration, either a prospectus has been issued and delivered for registration (section 41) which either complies with the requirements of the Fourth Schedule, or by virtue of a certificate of exemption is deemed so to comply (section 39 (2) (a)).

For the particulars required to be stated in a statement in lieu, see the Fourth Schedule. These are very much the same as the prospectus requirements under section 38. A statement in lieu, however, must be in the standardised form set out in the Third Schedule. The provisions as to statements in lieu would normally apply in the case where either a prospectus has not been issued, or, if it has, there has been no allotment of the shares offered to the public. In the latter event, the statement must be filed before the shares, etc., are allotted, otherwise the allotment will be void (*Re Jubilee Cotton Mills, Ltd.*, [1923] 1 Ch. 1, C.A. ; reversed on another ground, *sub nom. Jubilee Cotton Mills, Ltd. (Official Receiver and Liquidator) v. Lewis*, [1924] A.C. 958

9 Digest 46, 75. The effect of the changes introduced by section 67 of the 1947 Act and now incorporated in this section is that a statement in lieu in the form set out in the Third Schedule may be dispensed with in the circumstances here stated.

The same penalty is provided for default in complying with the provisions of this section as was provided by the corresponding section of the 1929 Act for default thereunder. A penalty is also laid down for including in the statement in lieu any untrue statement which is material, the onus of proving its immateriality or reasonable ground for belief in its truth being on the defendant. A statement is untrue if it is misleading in the form and context in which it is included (cf. section 48 (5)).

Untrue statement.—The statement must be in fact untrue, not merely untrue in the belief of the directors, but, if it is untrue, it is immaterial that it was not made fraudulently (*Broome v. Speak*, [1903] 1 Ch. 586, C.A.; affirmed *sub nom. Shephard v. Broome*, [1904] A.C. 342; 9 Digest 105, 460). If there is such an omission that the matter withheld would, if disclosed, reasonably have deterred or tended to deter an ordinary prudent investor from subscribing, that would constitute an untrue statement (*ibid.*). A misleading statement is untrue, notwithstanding that it is not untrue in the sense in which it was used by those who made it, the important meaning being that which is conveyed to those who read it (*Greenwood v. Leather Shod Wheel Co.*, [1900] 1 Ch. 421, C.A.; 9 Digest 111, 526).

Reasonable ground of belief.—To avoid liability, he must prove such reasonable ground of belief and belief in fact (*Greenwood v. Leather Shod Wheel Co.*, *supra*). Reasonable ground only need be proved, not sufficient ground and reliance may to some extent be placed on the advice and assistance of other persons (*Stevens v. Hoare* (1904), 20 T.L.R. 407; 9 Digest 110, 513). Honest belief that some material fact was not required in law to be stated is no defence (*Shephard v. Broome*, *supra*). Particulars of the alleged reasonable grounds may be ordered (*Alman v. Oppert*, [1901] 2 K.B. 576, C.A.; 9 Digest 129, 675).

Statement was immaterial.—See notes to section 44, *post*.

Definitions.—"Private company" (section 28); "certificate of exemption" (section 39 (1)); "default fine" (section 440 (1)); "officer in default" (section 440 (2)); "articles", "company", "officer", "prospectus", "registrar of companies" (section 455 (1)).

Reduction of Number of Members below Legal Minimum

31. Members severally liable for debts where business carried on with fewer than seven, or in case of private company two, members.—If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

NOTES

The section reproduces the 1929 Act, section 28.

Number of members reduced below seven or two.—The trustee of a bankrupt member or the personal representative of a deceased member is not counted in the number of seven or two, as the case may be (*Re Bowling and Welby's Contract*, [1895] 1 Ch. 663, C.A.; Digest Supp.). A member holding shares in a fiduciary capacity is so counted (*Salomon v. Salomon & Co.*, [1897] A.C. 22, at p. 30; 9 Digest 34, 11).

Effect.—If membership falls below two or seven, as the case may be, the fact will be disclosed in the annual return filed with the Registrar under section 124, and presumably this will be treated as *prima facie* notice to the remaining members of the irregularity.

If X Ltd. and Y Ltd. are shareholders of Z Ltd., a private company, and X goes into liquidation so that Y becomes the only existing member, and Y is aware of the fact, Y becomes liable for the debts of Z after six months from the time the membership fell below two. As to the invalidity of the subscription of a memorandum by a person resident outside the scheduled territories, see Exchange Control Act, 1947, s. 8 (2).

Definitions.—"Member" (section 26); "private company" (section 28); "company" (section 455 (1)).

Contracts, etc.

32. Form of contracts.—(1) Contracts on behalf of a company may be made as follows :—

- (a) a contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company ;
- (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied ;
- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) A deed to which a company is a party shall be held to be validly executed according to the law of Scotland on behalf of the company if it is executed in accordance with the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors or by a director and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

NOTES

The section corresponds with section 29 of the 1929 Act, with a minor amendment effected by section 82 (1) of the 1947 Act, which came into force on July 1, 1948. A company is a legal person and as such can contract in the same way as an individual. Unlike an individual, however, a company cannot act in person, and provision is here made for the mode in which a company may do those acts which are required to make a contract. See generally as to contracts by companies, 5 Halsbury's Laws (2nd edn.), pp. 420 *et seq.*

As to a company having a common seal, see section 108 (1) (b), *post*. For authority to use seal, see First Schedule, Table A, article 113. As to bills of exchange and promissory notes, see section 33, *post*, and as to execution of deeds abroad and use of seal abroad, see sections 34, 35. See also Law of Property Act, 1925, section 74 (15 Halsbury's Statutes 248), as to execution of instruments on behalf of corporations.

Execution of deeds in Scotland.—Two minor amendments are introduced into subsection (4), *supra*. In the corresponding provision of the 1929 Act, the reference was to the execution of a deed *in Scotland* and its subscription by *two directors and the secretary*. The first amendment is purely drafting. It is more accurate to refer to a deed being executed *according to the law of Scotland* rather than "in Scotland". The second amendment recognises a common practice which has long prevailed in Scotland, and which was upheld in *Clydesdale Bank (Moor Place) Nominees, Ltd. v. Snodgrass*, [1939] S.C. 805.

Execution of deeds in England.—As to the protection of purchasers and due execution of deeds, see Law of Property Act, 1925, s. 74 (15 Halsbury's Statutes 248).

33. Bills of exchange and promissory notes.—A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

NOTE

The section reproduces the 1929 Act, section 30. If any person on behalf of a company signs or authorises to be signed on its behalf any bill of exchange or promissory note and the company's name is not stated in legible characters, he is liable to the holder as well as incurring a fine (see section 108 (4)). A bill of exchange, or promissory note

signed by a director, must state on the face of it that he is acting on behalf of the company (*Elliot v. Bax-Ironside*, [1925] 2 K.B. 301, 309, C.A.; Digest Supp.), since otherwise he will be personally liable (*Dutton v. Marsh* (1871), L.R. 6 Q.B. 361; 1 Digest 646, 2665).

34. Execution of deeds abroad.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

NOTES

The section reproduces the 1929 Act, section 31.

Seal.—Cf. First Schedule, Table A, Part I, art. 113.

United Kingdom.—I.e., Great Britain and Northern Ireland (see note, section 14, ante).

35. Power for company to have official seal for use abroad.—

(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

NOTE

The section reproduces the 1929 Act, section 32. The use of an official seal in these circumstances will be called for if the company transacts any of its business abroad. The articles must, of course, authorise such seal, which must show, in addition to the company's name, the place where it is to be used.

Authentication of Documents

36. Authentication of documents.—A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

NOTE

The section reproduces the 1929 Act, section 33.

PART II

SHARE CAPITAL AND DEBENTURES

Prospectus

37. Dating of prospectus.—A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

NOTES

The section reproduces the 1929 Act, section 34 (1).

A company or anyone acting on its behalf may not nullify these provisions (for instance) by means of the issue of counter circulars and possibly this is what the section contemplated by the words "shall be dated . . ." or "taken as the date of publication", as the case may be. It is on or before the date of publication that the copy must be delivered to the Registrar (section 41 (1)). "Issued" in this section may be distinguished from "issued generally" in sections 39 (1) (a), 50, 51.

As to the provisions of section 34 (2) to (5) of the 1929 Act, see now section 41 *post*.

Prospectus is defined in section 455 (1); documents containing offers for sale of shares or debentures are deemed to be prospectuses (section 45); as to offering shares or debentures of foreign companies, see section 417.

38. Matters to be stated and reports to be set out in prospectus.

—(1) Subject to the provisions of the next following section, every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Fourth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Subject to the provisions of the next following section, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons ; or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange ;

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

NOTES

The section combines section 35 of the 1929 Act and section 64 (1) of the 1947 Act. The last-mentioned provision came into force on July 1, 1948.

Financial Control.—As to the need for the Treasury's permission to the issue of securities, which term includes shares, in favour of persons resident outside the scheduled territories, see Exchange Control Act, 1947, ss. 8, 10, 11 ; as to the restriction on raising money by the issue of shares without the Treasury's consent, see the Control of Borrowing Order, 1947, S.R. & O. 1947, No. 945, art. 3, and, for the exemptions, art. 8, made under the Borrowing (Control and Guarantees) Act, 1946, s. 1 (39 Halsbury's Statutes 315) ; as to the requirement of licence for dealing in securities, and restrictions on circulars, see Prevention of Fraud (Investments) Act, 1939, ss. 1, 13, 14 (32 Halsbury's Statutes 120, 132, 135), but the restriction on circulars does not apply to prospectuses and similar documents containing the particulars required under the Companies Act, 1948. The subject of financial control is fully discussed and explained in Howard on Exchange Control (Butterworth's Annotated Legislation Service, Supplement No. 43).

The section deals with the requirements as to contents and authentication of information to be included in a prospectus in relation either to the flotation of public companies or the issue by an existing public company of further capital. The application of these provisions must be considered carefully with respect to the next section which deals with the relaxation of prospectus requirements in certain cases, and in recognition of the circumstances there stated, this section (subsection (5) (b)) absolves a company from complying with prospectus requirements where there is a further issue of shares or debentures uniform with some already dealt in or quoted on a prescribed stock exchange. It should be noted that there is no distinction as to requirements between a prospectus issued as a separate document and a newspaper advertisement (see further section 45). The particulars required to be disclosed are obligatory and in order to prevent abuse, the section avoids any condition to the contrary incorporated in the terms of a prospectus (subsection (2)). A liability is also imposed on directors to ensure that the requirements of the section are complied with (subsection (4)) and also that the information therein is accurate (see section 43).

Subsection (5).—An offer of shares or debentures which is confined to existing members, etc., is a domestic affair of those concerned and is not interfered with by this section. As to what constitutes an issue to the public, see *Lynde v. Nash*, [1928] 2 K.B. 93, C.A. ; reversed on another ground *sub nom. Nash v. Lynde*, [1929] A.C. 158 ; Digest Supp. and see generally notes to section 50, *post*, and section 55, *post*. The new provisions to be particularly noted in considering the question of what amounts to an offer to the public are dealt with in section 55 (which *inter alia* extends prospectus requirements to include "placings" in the conditions there stated).

Penalties.—As to civil and criminal liability for mis-statements, see sections 43 and 44.

Subsection (6) : liability under the general law.—E.g., for deceit, see *Derry v. Peek* (1889), 14 App. Cas. 337, H.L. ; 9 Digest 125, 642.

Other related provisions.—Section 37 (dating) ; section 39 (stock exchange requirements for companies only seeking a market quotation) ; section 40 (experts report) ; section 41 (signature and registration) ; sections 45, 47, 50 (requirements where shares or debentures are offered for sale or in the case of an allotment) ; section 46 (statements included in a prospectus) ; section 48 (requirements as to contents of statements in lieu of prospectus) ; section 51 (provisions relating to permission to deal in new issues) ; section 109 (commencement of business) ; section 181 (1) (directors undertaking, etc.).

Offers for sale.—The purchasers of shares with a view to sale to the public must comply with the provisions of section 45 (3).

Definitions.—"Formation of company" (section 1 (1)); "member" (section 26); "company", "debenture", "director", "document", "prospectus", "prescribed", "share" (section 455 (1)).

39. Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.—(1) Where—

- (a) it is proposed to offer any shares in or debentures of a company to the public by a prospectus issued generally (that is to say, issued to persons who are not existing members or debenture holders of the company); and
- (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission made to the stock exchange are so published, then—

- (a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and
- (b) the last foregoing section shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the shares or debentures.

NOTES

The section corresponds with sections 64 (2), (3) of the 1947 Act. *Ibid.*, section 64 (1) has been incorporated in section 38, *ante* (see *ibid.*, subsection (5)). The section came into force on July 1, 1948.

The effect of the section is that where a prospectus is issued generally and application is made to a prescribed stock exchange for permission to deal or for a quotation, a certificate of exemption may be granted by that stock exchange to the applicant. Such certificate, if the proposals made when applying for it are fulfilled, will exempt the company, so far as that issue is concerned, from actual compliance with the requirements of the Fourth Schedule and from the provisions of section 38.

Prospectus issued generally.—I.e., to persons who are not existing members or debenture holders. A prospectus which is issued to anyone who is not a member or debenture holder is issued generally even though it is also issued to existing members or debenture holders. The expression "issued generally" would seem to be equivalent to "issued to the public", as to which, see the notes to section 38 (5).

Application for permission to deal.—I.e., application for permission to deal on a prescribed stock exchange in respect of the shares or debentures referred to in subsection (1) (a) *supra*, or for a quotation in respect of those shares or debentures. As to such applications, see section 51.

Prospectus giving particulars in the form required.—I.e., in the form as required by the stock exchange to which application has been made for a certificate of exemption. The stock exchange may impose any requirements they choose as to disclosure of the facts relating to the issue or other material information, and may grant the certificate of exemption conditional on the company publishing information strictly in the form in which they require it. There is nothing to prevent the stock exchange imposing conditions which go beyond the requirements of the Act.

For provisions as to registration, see section 61.

Definitions.—"Member" (section 26); "company", "debenture", "issued generally", "prescribed", "prospectus", "share" (section 455 (1)).

40. Expert's consent to issue of prospectus containing statement by him.—(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

- (a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included ; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding five hundred pounds.

(3) In this section the expression " expert " includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

NOTES

The section corresponds with section 63 (1) of the 1947 Act, which came into force on July 1, 1948. The definition of " expert " corresponds with that given in section 37 (4) of the 1929 Act.

Delivery of copy for registration.—Section 41 (1) provides that a copy of the prospectus, having the consent endorsed thereon or attached thereto, must be filed with the Registrar before the date of publication. In some cases, some time passes between the date the prospectus is filed and the date it is issued. But for this provision an expert would be in a position to withdraw his consent at any time up to the issue of the prospectus, and thereby cause considerable hindrance. The provision, therefore, makes it clear that withdrawal of consent is only permitted before delivery for registration.

Form and context in which it is included : Liability.—The consent must be, not merely to the inclusion of the statement in the prospectus, but also to its inclusion in the form and context in which it appears in the prospectus. A statement may in itself be true and yet, presented in a particular context, it will give a false impression. Such a statement is regarded as being a false statement (see *Peek v. Gurney* (1873), L.R. 6 H.L. 377 ; 9 Digest 102, 439 ; *R. v. Kylsant* (Lord), [1932] 1 K.B. 442 ; Digest Supp.). It is therefore necessary for the expert to warrant the truth of his statement in the context in which it is given. As to the expert's liability for loss caused by untrue statements, see section 43 (1) proviso, and subsection (2) of that section.

Included.—See section 46.

Knowingly.—This would appear to mean with knowledge of the facts upon which contravention depends (*Burlon v. Bevan*, [1908] 2 Ch. 240 ; 9 Digest 267, 1652).

Definitions.—" Company ", " debenture ", " prospectus ", " share " (section 455 (1)).

41. Registration of prospectus.—(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

- (a) any consent to the issue of the prospectus required by the last foregoing section from any person as an expert ; and
- (b) in the case of a prospectus issued generally, also—

- (i) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section thirty-nine of this Act to comply with the requirements of that Schedule a

contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application made under that section to the stock exchange, a copy or, as the case may be, a memorandum of that contract ; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

The references in sub-paragraph (i) of paragraph (b) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

(2) Every prospectus shall, on the face of it,—

(a) state that a copy has been delivered for registration as required by this section ; and

(b) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

(4) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

NOTES

This section combines section 34 (2) to (5) of the 1929 Act, and sections 63 (2) to (5) and 64 (4) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948. Section 34 (1) of the 1929 Act is reproduced in section 37.

The copy of the prospectus filed must, in all cases, (a) be signed by the named directors or proposed directors or by their agents authorised in writing, and (b) have indorsed thereon or attached thereto any necessary expert's consents (as to which, see section 40). In the case of a prospectus issued generally (as to which see section 39), there must also be indorsed on the copy (i) a copy of every written contract required by paragraph 14 of the Fourth Schedule, to be stated in the prospectus, and a memorandum of every verbal contract so required to be stated and (ii) any statement by accountants reporting under Part II of that Schedule showing adjustments, mentioned in paragraph 29 of the Schedule, made by them and the reasons therefor. In the case of a prospectus in respect of which a certificate of exemption has been granted under section 39, in place of the copy contracts required under (i) *supra*, copies must be attached of any contract required to be available for inspection in connection with the application for permission made to the stock exchange. Any material contract requiring so to be disclosed, but which is in a foreign language, must be translated into English and a certified copy of the translation filed in its place. The prospectus must state, on its face that a copy has been filed as required and must also specify or otherwise indicate any documents required by this section to be indorsed on or attached to the copy filed. Registration of a prospectus must be refused if (a) it is not dated as required by section 37, or (b) the requirements of this section have not been met. A penalty is imposed for the issue of a prospectus in respect of which the requirements of this section have not been met.

Contracts to be stated in the prospectus.—See the Fourth Schedule, paragraph 14, and note thereto.

Certificate of exemption under section 39.—Such certificate excuses compliance with certain provisions of the Fourth Schedule. The requirements as to registration and inspection, however, are not so relaxed and copies of the relevant contracts must be available for “inspection in connection with the application made . . . to the stock exchange.” It should be noted, however, that only contracts required to be available for inspection in connection with the application to the stock exchange are affected.

Report required by Part II of the Fourth Schedule.—See paragraph 29 of that Schedule.

Knowingly.—See note to section 40, *ante*.

Definitions.—“prospectus issued generally” (section 39, 455 (1)); “agent”, “company”, “director”, “document”, “prospectus”, “registrar”, “registrar of companies” (section 455 (1)).

42. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.—(1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

NOTES

The section reproduces the 1929 Act, section 36.

Definitions.—“Company limited by guarantee”, “company limited by shares” (section 1 (2)); “private company” (section 28); “statutory meeting” (section 130).

As to statement in lieu of prospectus, see sections 30 and 48, and the Third and Fifth Schedules. As to share capital, see sections 59 *et seq*.

43. Civil liability for mis-statements in prospectus.—(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say:—

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person being a promoter of the company; and
- (d) every person who has authorised the issue of the prospectus:

Provided that where, under section forty of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) of this section if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

- (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor ; or

- (d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true ; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section forty of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder ; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document :

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section forty, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section forty of this Act, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

- (a) that, having given his consent under the said section forty to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration ; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor ; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

- (4) Where—

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof ; or
- (b) the consent of a person is required under section forty of this Act to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus ; the directors of the company, except any without whose knowledge or

consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

- (a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and
- (b) the expression “expert” has the same meaning as in section forty of this Act.

NOTES

The section combines section 37 of the 1929 Act and section 65 of the 1947 Act. The last-mentioned section came into force on July 1, 1948.

The effect of the section is that the persons specified in paragraphs (a) to (d) of subsection (1), *supra*, including under head (d) the expert in respect of untrue statements in that capacity, are liable in damages to persons who subscribe for any shares or debentures on the faith of the prospectus in respect of any damage sustained by reason of an untrue statement contained in the prospectus, unless they can set up and establish one of the defences set out in subsection (2), *supra*. Persons by whose authority or with whose knowledge or consent the prospectus is issued are liable to indemnify against such liability the persons specified in subsection (4), *supra*. A similar liability was imposed by section 37 of the 1929 Act, for the general effect of which, see the notes to that section in Buckley on Companies (11th Edn.); 5 Halsbury's Laws (2nd Edn.) pp. 209 *et seq.* Some important changes were, however, effected by section 65 of the 1947 Act, and these have been incorporated in the present section. These changes relate mainly to the liability of an expert in respect of statements purporting to be made by him as an expert.

Experts.—An expert who has given his consent to the issue of a prospectus under section 40, is not, by reason of that fact only, liable as a person who has authorised the issue of the prospectus either under subsection (1) or subsection (4), *supra*, unless, with regard to subsection (1), the statement so authorised by him contains any untrue statement. If any untrue statement is included, he is liable in damages to a person subscribing on the faith of the prospectus as a person authorising the issue of the prospectus. The defences available to other such persons under subsection (2), *supra*, are not, however, available to an expert. To escape liability, he must establish one of the defences set out in subsection (3), *supra*.

An expert whose statement is included in a prospectus which is issued without his consent to such inclusion, or who has withdrawn his consent after having given it, in accordance with the provisions of section 40, is entitled to the same indemnity as a person named in the prospectus as a director without his consent, see subsection (4), *supra*.

Changes in respect of persons other than experts.—Where a person other than an expert avails himself of the defence under subsection (2) (ii) that the statement fairly represented a statement by an expert or was a correct and fair copy of or extract from a report or valuation by an expert (which was sufficient for the purpose of the corresponding provision of the 1929 Act), he must now also prove (a) that he had reasonable ground to believe and did believe, up to the time of the issue of the prospectus, that the expert was competent, and (b) that the necessary consents had been given and not withdrawn before registration, or to his knowledge, before allotment. The onus is thus shifted from the plaintiff to the defendant. Under the 1929 Act, the plaintiff had to prove that the defendant had no reasonable grounds to believe that the expert was competent.

Section 37 (3) of the 1929 Act, which provided for contribution between persons liable under the provision of that section to pay contribution, is not re-enacted in this section. In 1929, when that provision was made, it was an exception to the general

rule, that there was no contribution between joint tortfeasors. Since the Law Reform (Married Women and Tortfeasors) Act, 1935 (28 Halsbury's Statutes 104, 473) (in England), and the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940 (in Scotland), this is no longer the case. Special provision is, therefore, no longer necessary, and contribution is recoverable under Part II of the 1935 Act and section 3 of the 1940 Act, in England and Scotland respectively.

Subject to the provisions of this section.—See the proviso to subsection (1) and subsections (2) and (3), *supra*.

Liability to pay compensation.—The compensation must be established and awarded with reference to the actual loss sustained and is not a penalty imposed as a punishment (*Thomson v. Clanmorris (Lord)*, [1900] 1 Ch. 718, C.A.; 9 Digest 132, 703). By subscription is meant application followed by allotment, and not subsequent purchase (*Peek v. Gurney* (1873), L.R. 6 H.L. 377; 9 Digest 102, 439).

On the faith of the prospectus.—The plaintiff must have relied on the statement or material omission (*Baly v. Keswick* (1901), 85 L.T. 18; 9 Digest 104, 446).

Untrue statement.—See note to section 30. See also section 46. As to the liability at common law for deceit, which is a cause of action distinct from a claim under the above section, see *Derry v. Peek* (1889), 14 App. Cas. 337, H.L.; 9 Digest 125, 642.

Subsection (2) : Prospectus issued without directors' consent.—Persons acting on advance copies of a prospectus issued without authority have not, *per se*, a right of action (*Hoole v. Speak*, [1904] 2 Ch. 732; 9 Digest 109, 501). A director who knows that a prospectus is to be issued and does not ask to see it cannot claim that it was issued without his knowledge or consent, and he cannot repudiate it after action brought nor is a repudiation by his defence "reasonable public notice" (*Drincqbier v. Wood*, [1899] 1 Ch. 393, at pp. 405, 406; 9 Digest 129, 677).

Reasonable public notice.—See *Drincqbier v. Wood*, *supra*. The notice must state not only the fact of withdrawal, but also the reason for such withdrawal, i.e., that he has become aware of the fact that the statement specified was untrue.

Reasonable ground for belief.—See note to section 30.

Subsection 2 (d) (ii).—As to what has now to be proved under this ground of defence, see the note on "effect of changes", *supra*. The defendant cannot rely on a report which was not in existence when the prospectus was issued. (*Coats (J. & P.), Ltd. v. Crossland* (1904), 20 T.L.R. 800; 9 Digest 126, 646).

Delivery of copy of prospectus for registration.—See section 40.

Definitions.—"Expert" (section 40); "statement included in a prospectus" (section 46); "company", "debenture", "director", "document", "prospectus", "share" (section 455 (1)); "person", "writing" (Interpretation Act, 1889, sections 19, 20; 18 Halsbury's Statutes 1001).

44. Criminal liability for mis-statements in prospectus.—

(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorised the issue of the prospectus shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine not exceeding five hundred pounds, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding one hundred pounds, or both;

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

NOTES

The section reproduces section 66 of the 1947 Act, which came into force on July 1, 1948.

No special provision had been made in the 1929 Act for criminal proceedings in respect of untrue statements in a prospectus. Prosecutions for the issue of misleading prospectuses were formerly brought in England under section 84 of the Larceny Act, 1861 (4 Halsbury's Statutes 554), and in Scotland at common law. The present provision has the effect, once the prosecution has established the falsity of a statement in a prospectus signed by a director, etc. of shifting the onus on to the defendant

to establish either (a) that the statement was immaterial; or (b) that he believed on reasonable grounds up to the time of the issue of the prospectus that the statement was true. An expert who has given the consent required by section 40, is not *ipso facto* a "person who authorised the issue of the prospectus" for the purpose of this section.

Includes any untrue statement.—See section 46; as to untruth, see notes to section 30.

Authorised the issue.—As to signatures to the filed copy prospectus, see section 41 (1); cf. s. 43 (1).

Immaterial.—Whether a statement is material is a question of fact in each case (see *R. v. Kylsant (Lord)*, [1932] 1 K.B. 442; Digest Supp.).

Reasonable ground of belief.—See note to section 30.

Consent required by the Act.—See section 40.

Definitions.—"Expert" (section 40 (3)); "prospectus" (section 455 (i)); "commencement of this Act" (section 462 (2)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

45. Document containing offer of shares or debentures for sale to be deemed prospectus.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section thirty-eight of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

and section forty-one of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

NOTES

This section reproduces section 38 of the 1929 Act. As to the position before then, see *Urquhart v. Stracey*, [1928] N.I. 162; Digest Supp.

General Note.—A document is deemed to be a prospectus if (i) the company has allotted or agreed to allot its shares or debentures with a view to all or any being offered for sale to the public (cf. section 55) and (ii) the document is that by which the offer for sale to the public is made. The prospectus is deemed to be issued by the company, with all consequential liability of directors and others, but without prejudice to the liability of the persons, possibly an issuing house, by whom the offer for sale was actually made (subsection (1) *supra*; cf. particularly the final provision of subsection (3)).

All enactments . . . as to prospectuses, etc.—See particularly sections 38 (matter to be stated in prospectus; modified by subsection (3) *supra*); 40 (experts); 41 (registration); and 43, 44 (mis-statements; civil and criminal liability).

Subsection (2).—The evidence is not conclusive of the existence of an allotment or agreement to allot, but may be rebutted.

Definitions.—“Offer for sale to the public” (section 55); “agent”, “company”, “debenture”, “director”, “prospectus”, “share” (section 455 (1)); “person” (Interpretation Act, 1889, section 19; 18 Halsbury’s Statutes 1001).

46. Interpretation of provisions relating to prospectuses.—

For the purposes of the foregoing provisions of this Part of this Act—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

NOTES

The section substantially reproduces sections 68 (3) and (4) (b) of the 1947 Act, which came into force on July 1, 1948.

Section 37 (1) of the 1929 Act (with which section 43, *ante*, corresponds) imposed liability for damage resulting from any untrue statement in a prospectus, but did not deal with omission of material information which could create just as mischievous a situation as an untrue statement. This particular defect is now remedied by this section and a liability is imposed where there is omission of information in a prospectus which would have the effect of rendering misleading a statement therein.

A similar provision is made in regard to statements in lieu of prospectus, as to which see sections 30 and 48.

Allotment

47. Prohibition of allotment unless minimum subscription received.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Fourth Schedule to this Act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as “the minimum subscription”.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money

received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

NOTES

The section reproduces section 39 of the 1929 Act.

The effect of the section is that, in the case of the *first* allotment of shares offered to the public for subscription, no allotment may be made unless (1) the minimum subscription has been subscribed ; and (2) the sum payable on application for the minimum subscription has been paid to and received by the company. In the case of the first or any subsequent allotment, the amount payable on application must be not less than 5 per cent of the nominal amount of the share. The requirements as regards a first allotment cannot be waived, and, in the event of non-compliance, application moneys must be repaid as provided for in subsection (4), *supra*.

The object of these provisions is to ensure that a company commences business with sufficient capital (see also section 109, *post*). This requirement would be fully satisfied if the whole or part (not being less than the minimum subscription) were underwritten, since in that case, if the issue is not favourably received by the public, the underwriters become liable to take up those shares as if they had been applied for in the ordinary way. The Act does not lay down any statutory requirements dealing with the financial stability of underwriters on the question of whether or not they can discharge the liability they may have to undertake any more than it does in the case of a cheque received in good faith from a subscriber, but it is assumed that the vigilance of the stock exchange will ensure that permission to deal will be granted only to a company which has made underwriting arrangements (i.e., in the event of the issue being underwritten) with a reputable and reliable firm.

Offer to the public.—See notes to sections 38 and section 55.

Minimum subscription.—This is the minimum amount which in the opinion of the directors is necessary to provide for the purchase price of property to be purchased, preliminary expenses and commission, and repayment of borrowed moneys and working capital (see the Fourth Schedule, paragraph 4).

Payment by cheque.—Before the 1929 Act, a cheque was not payment until it had been cleared (*Mears v. Western Canadian Pulp and Paper Co., Ltd.*, [1905] 2 Ch. 353, C.A. ; 9 Digest 266, 1650).

Repayment of moneys on non-compliance.—This provision applies only before allotment, and the company cannot after allotment pay back the application moneys (*Burton v. Bevan*, [1908] 2 Ch. 240, *per* Neville, J., at p. 246 ; 9 Digest 267, 1652).

Cross-references.—For the effect of an irregular allotment, see section 49. As to share capital, see sections 59 *et seq.* As to applications and allotment, see sections 50 to 52.

Definitions.—" Company ", " director ", " prospectus ", " share " (section 455 (1)).

48. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Part I of the Fifth Schedule to this

Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both ; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both ;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

NOTES

The section combines section 40 of the 1929 Act and section 67 (2)–(6), 68 (3) and 105 (4) of the 1947 Act. These last-mentioned provisions came into force on July 1, 1948.

The effect of the section is that where a public company having a share capital allots shares or debentures otherwise than in pursuance of a prospectus issued to the public, it must deliver for registration a statement in lieu of prospectus in accordance with the provisions of Part I of the Fifth Schedule, *post*. In the cases specified in Part II of that Schedule, the reports there specified must be set out in the statement in lieu. No allotment may be made until three days after the statement in lieu has been filed. Penalties are imposed for contraventions or for untrue statements.

The section covers, for example, the case of a private company converting itself into a public company and making an allotment (see also section 30). As a private company, there was no issue of shares to the public, but on becoming a public company, there may be need to come to the stock exchange for a quotation on these shares. In these circumstances, the provisions of section 38 (as to prospectus) will not apply if the company has issued a statement in lieu, and if it neither issues an offer for sale (as to which, see section 45), nor “ places ” the shares so as to constitute an invitation to the public under section 55. It should also be noted that a statement in lieu would not prevent an offer of sale to the public within six months after allotment or agreement to allot being deemed a prospectus under section 45. In that case, the

proper course would be to issue an ordinary prospectus which complies with section 38 subject, however, to the exclusion of those provisions in appropriate cases under section 39.

The provisions of sections 67 and 68 of the 1947 Act (which are incorporated in this section) required more detailed information as regards the particulars to be stated in a statement in lieu, as to which see Fifth Schedule and the notes thereto.

The general effect of these changes is to bring the requirements as to the statement in lieu, into line with the requirements as to the prospectus itself.

Irregular allotment.—As to avoidance of allotment, see section 49.

Subsection (4): Knowingly and wilfully.—As to the term “knowingly”, see note to section 40. Here, however, the contravention must not only be “knowingly”, i.e., with knowledge of the facts, but also “wilfully”, i.e., with the intention that the contravention should take place. As to the expression “wilfully” used in another connection, see section 149 (6). The additional requirement that the contravention must be wilful in order to render the director liable to the penalty was added by section 105 (4) of the 1947 Act, in order to ameliorate, to some extent, the stringency of the penal provisions cited in that subsection.

Subsection (5): Untrue statements.—The penalties for untrue statements in a statement in lieu (subsection (5) *supra*) are now the same as those for untrue statements in a prospectus; as to untrue statements see notes to section 30.

It should be noted that the penalty imposed for any contravention of these provisions will also apply to any contravention with regard to the reports required to be set out in a statement in lieu.

Immaterial.—See note to section 44.

Reasonable ground of belief.—See notes to section 30.

Subsection (6).—Cf. section 30 (5) and 46.

Definition.—“Private company” (section 28); “agent”, “company”, “debtures”, “director”, “prospectus”, “registrar of companies”, “share” (section 455 (1)).

49. Effect of irregular allotment.—(1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

NOTES

The section reproduces section 41 of the 1929 Act.

The provision confers a right on an applicant to avoid an irregular allotment and was first introduced by section 41 of the 1929 Act. It had previously been held, however, that an allotment before delivery of a statement in lieu of prospectus was void, but on the facts the allottee was estopped by his conduct from denying that he was a member (*Re Jubilee Cotton Mills, Ltd.*, [1923] 1 Ch. 1, C.A.; reversed on another ground *sub nom. Jubilee Cotton Mills, Ltd. (Official Receiver and Liquidator) v. Lewis*, [1924] A.C. 958; 9 Digest 46, 75). An allotment following delivery of a statement so insufficient and illusory as to amount to no statement, was, it seems, equally void, but an allotment following delivery of inaccurate particulars was not (*Re Blair Open Hearth Furnace Co., Ltd.*, [1914] 1 Ch. 390, C.A.; 9 Digest 144, 818).

The applicant may within the month prescribed either (1) commence an action claiming relief (*Mears v. Western Canada Pulp and Paper Co., Ltd.*, [1905] 2 Ch. 353, C.A.; 9 Digest 266, 1650) or may give notice of avoidance (which need not specify the ground); but the notice must be followed by prompt legal proceedings (*Re National Motor Mail-Coach Co., Ltd., Anstis' and McLean's Claims*, [1908] 2 Ch. 228; 9 Digest 266, 1651).

Statutory meeting.—See section 130. The only companies not required to hold a statutory meeting are private companies (*ibid.*, subsection (10)), companies limited by guarantee and not having a share capital, and unlimited companies (*ibid.*, subsection (1)).

Director who knowingly contravenes.—The contravention must be with knowledge of the facts; but a director cannot escape liability by being ignorant of the law (*Burton v. Bevan*, [1908] 2 Ch. 240; 9 Digest 267, 1652).

Irregular allotment.—The provisions of article 105 of Table A, Part I, in the First Schedule (article 88 of the corresponding Table in the 1929 Act) were unsuccessfully invoked to uphold an allotment invalidated by defect in appointment of directors, *Morris v. Kanssen*, [1946] A.C. 459; [1946] 1 All. E.R. 586, H.L.; 2nd Digest Supp.

Definitions.—"Statutory meeting" (section 130 (1)); "company", "director" (section 455 (1)).

50. Applications for, and allotment of, shares and debentures.—

(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is hereafter in this Act referred to as "the time of the opening of the subscription lists".

(2) In the foregoing subsection, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section forty-three of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this and the next succeeding section the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday in any part of Great Britain shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

(7) This section shall not apply in relation to a prospectus to which paragraph (a) or (b) of subsection (2) of section thirty-nine of this Act applies.

NOTES

The section reproduces section 59 of the 1947 Act. That section came into force on July 1, 1948.

This and the next sections amend the provisions of the 1929 Act with respect to the allotment of shares in several important respects. So far as this section is concerned,

the main changes can be summarised as follows :—(i) a company cannot close the lists and proceed to allotment immediately after the issue of the prospectus. There is now a minimum compulsory interval of two days between the issue of the prospectus and the allotment, so as to permit of Press comment and for the public to obtain advice ; (ii) applications are irrevocable for three days after the opening of the lists, so as to curb the operations of “ stags ” who apply for them in order to sell quickly at a profit ; (iii) the section is also applied to issues by a company to an issuing house or some other person and offered for sale by the issuing house or such other person. This ties up with the provisions of section 48, and extends the penalties under this section to such person as if he were a director or other officer of the company.

It should be noted that these provisions do not apply in the case of a prospectus issued only to existing members or debenture holders or to a prospectus in respect of which a certificate of exemption has been granted (subsection (7), *supra*, and section 39 (2)).

Subsection (1) : Prospectus issued generally.—See sections 39, 455 (1).

Proceedings on applications.—The usual practice was summed up in the Cohen Report (paragraph 19) as follows :—Shortly after the publication of the prospectus, the lists are opened, or, in other words, the bank authorised by the company to receive applications and subscriptions from the public, is prepared to accept them. When sufficient applications have been received, the lists are closed and the company allots shares or securities to the public. These are the proceedings here referred to. The lists may not be opened, nor any other steps taken as above or otherwise until the beginning of the third day after that on which the prospectus is first issued.

Applications.—An application in the usual form impliedly authorises acceptance by post (*Household Fire Insurance Co. v. Grant*, (1879), 4 Ex. D. 216, C.A. ; 9 Digest 282, 1740). Posting of an allotment letter completes the contract (*Harris's Case* (1872), 7 Ch. App. 587 ; 9 Digest 267, 1657), unless it is posted, not to the applicant, but to someone else, not being his agent (*Hebb's Case* (1867), L.R. 4 Eq. 9 ; 9 Digest 263, 1631). There is no contract on a conditional application (*Simpson's Case* (1869), 4 Ch. App. 184 ; 9 Digest 238, 1504) or where the allotment letter introduces a new term or condition (*Addinell's Case* (1865), L.R. 1 Eq. 225 ; 9 Digest 274, 1681). See generally 5 Halsbury's Laws (2nd Edn.) pp. 253–255.

Validity of allotment.—Where an allotment has been made on a binding contract to take shares, it cannot be cancelled by the company (*Adams' Case* (1872), L.R. 13 Eq. 474 ; 9 Digest 264, 1638), and contravention of these provisions does not entitle the allottee to repudiate the shares allotted to him.

Knowingly and wilfully.—See note to section 40.

Subsection (5) : Restriction on power of revocation.—This provision overrules the decisions in *Ramsgate Victoria Hotel Co. v. Montefiore* (1866), L.R. 1 Exch. 109 ; 9 Digest 275, 1693 (where it was held that an application could be withdrawn before allotment), and *Pentelow's Case* (1869), 4 Ch. App. 178 ; 9 Digest 274, 1682 (where it was held that it could be withdrawn while the company was still *in fieri*).

It will be noted that the provision is excluded where a director or other person responsible under section 43, gives public notice under that section with respect to some misrepresentation or omission in the prospectus. As to liability for untrue statements, etc., in a prospectus, see sections 42, 43 and generally 5 Halsbury's Laws (2nd Edn.) pp. 198 *et seq.*

Subsection (7).—This subsection re-enacts a corresponding provision of section 64 (3) of the 1947 Act, and provides that where a certificate of exemption is granted under section 39, *ante*, the provisions of this section do not apply.

Definitions.—“ Prospectus issued generally ” (sections 39, 455 (1)) ; “ offer for sale ” (section 45 (2)) ; “ officer in default ” (section 440 (2)) ; “ bank holiday ”, “ company ”, “ debenture ”, “ officer ”, “ prospectus ”, “ share ” (section 455 (1)).

51. Allotment of shares and debentures to be dealt in on stock exchange.—(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if

any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiration of the eighth day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under the last foregoing subsection ; and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect—

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus ; and

(b) in relation to a prospectus offering shares for sale with the following modifications, that is to say—

(i) references to sale shall be substituted for references to allotment ;

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly ; and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

NOTES

The section reproduces section 60 of the 1947 Act, with the exception of subsection (5) of that section (as to which, see section 109 (1) (c), *post*). Section 60 came into force on July 1, 1948.

The purpose of this section is to afford the investor a greater measure of security by making it obligatory, in effect, on every public company which stated in its prospectus that application had been or would be made for permission to deal to apply for permission not later than two days after the issue of the prospectus ; if permission was not applied for before the third day or was definitively refused before the expiration of a period of three weeks (which can be extended to six weeks), the allotment is to be avoided and the subscription moneys are to be returned forthwith to the applicants. An incidental result may be that a new company may be prevented from carrying on business for a period of six weeks (see section 109 (1) (c)).

Moneys paid in respect of applications from the public and underwriters must be returned if a quotation is not granted by the stock exchange or where application for permission to deal is not made within the specified time limit. If, however, the stock exchange decide to defer consideration, this is not deemed to be a refusal (see subsection (5), *supra*). It should be noted that the liability to repay may be extended to the directors in certain events (see subsection (2), *supra*), and to persons offering shares for sale (subsection (6), *supra*). For the protection of investors, a statutory obligation is placed on a company to pay all moneys received from subscribers into a separate banking account, where they must be kept intact until the conditions set out in subsection (2), *supra*, have been complied with, that is to say, so long as the company may become liable to repay it to applicants. While the liability may arise, any cheque drawn on that account must be regarded as a misapplication of subscription funds.

Subsection (2) : Misconduct or negligence.—A director is liable for negligence in performing his duties (*Re City Equitable Fire Insurance Co., Ltd.*, [1925] Ch. 407 C.A.; Digest Supp.), but an error of judgment by a director acting honestly and with reasonable care does not render him liable (*Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392, C.A.; 9 Digest 463, 3059). See generally 5 Halsbury's Laws (2nd Edn.) pp. 325 *et seq.* Where a director has acted negligently but honestly and reasonably, he may, in certain circumstances, be relieved from liability, either wholly or in part (see section 448 (1)).

Subsection (6) : Underwriter.—A person underwriting an offer, is one who guarantees the subscription of the proposed issue and it is not unusual in such cases for the underwriter to protect himself by prior agreements with sub-underwriters to which the company is not a party. By section 38, and the Fourth Schedule, Part I, paragraph 11, certain particulars of underwriting commissions must be stated in a prospectus.

Prospectus offering shares for sale.—See section 455 (1); cf. sections 39, 45.

Knowingly and wilfully.—See note to section 48.

Definitions.—"Prospectus issued generally" (sections 39, 455 (1)); "offer for sale" (section 45 (2)); "officer in default" (section 440 (2)); "company", "debenture", "director", "officer", "prospectus", "share" (section 455 (1)).

52. Return as to allotments.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, the company, or any officer liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

NOTES

The section reproduces section 42 of the 1929 Act with a minor amendment to subsection (3) made by section 105 (1) of the 1947 Act, which came into force on July 1, 1948.

The section provides in effect that every company which has a share capital must, within a month of any allotment of shares, make a return of allotments containing

the particulars and accompanied by the documents specified in subsection (1) (a) and (b), *supra*, or in subsection (2), as the case may be. Default renders every officer of the company liable to the penalty provided for in subsection (3), *supra*, but the Court has power to grant relief in suitable cases.

Section 42 (3) of the 1929 Act provided that the persons liable to that penalty were "every director, manager, secretary, or other officer of the company who is knowingly a party to the default". This was amended by section 105 (1) and the Fifth Schedule of the 1947 Act to read "every officer of the company who is in default" and the section is here reproduced as so amended.

Contract in writing.—Where an option is granted to take fully paid shares as part of the consideration, a contract or memorandum of a contract exercising the option is required (*Re Coolgardie Consolidated Gold Mines, Ltd.* (1898), 14 T.L.R. 277; 9 Digest 307, 1903).

Consideration for allotment.—As to what is an adequate statement of the consideration, see *Re Frost (S.) & Co., Ltd.*, [1899] 2 Ch. 207, C.A.; 9 Digest 309, 1917.

Subsection (2) : Prescribed particulars.—These are contained in Board of Trade Form No. 52 (S.R. & O. 1929 No. 823, r. 1, see Appendix V, *post*.)

Instrument.—See the Stamp Act, 1891, section 122 (16 Halsbury's Statutes 655).

Adjudication under the Stamp Act.—See *ibid.*, section 12 (16 Halsbury's Statutes 621).

Subsection (3) : Accidental omission.—An accident is probably an unlooked for mishap or an untoward event which was not expected or designed (see *Fenton v. Thorley & Co., Ltd.*, [1903] A.C. 443; 34 Digest 266, 2264).

Inadvertence.—This includes cases where there has been delay in adjudicating on the stamp duty (*Re Lucky Guss, Ltd.* (1898), 79 L.T. 722; 9 Digest 319, 2013), or ignorance or forgetfulness of the law (*Re Jackson & Co., Ltd.*, [1899] 1 Ch. 348; 9 Digest 307, 1904).

Just and equitable to grant relief.—See *Spiers and Bevan's Case*, [1899] 1 Ch. 210; 9 Digest 319, 2008.

Relief by the Court.—The Court has a wide discretion, and the statutory provisions apply whether any part or the whole of the consideration was other than cash (*Re Tom-Tit Cycle Co., Ltd.* (1899), 43 Sol. Jo. 334; 9 Digest 317, 1988). For cases where relief was granted under former Acts, see 5 Halsbury's Laws (2nd Edn.), pp. 261, 262, note (m).

The application is made by motion (R.S.C., Order 53B, r. 7 (a)) to the Court having jurisdiction to wind up the company (see section 455 (1)). In the High Court, jurisdiction may be exercised either by the Judge to whom the winding-up jurisdiction of the High Court is from time to time assigned or by any other judge of the Chancery Division (R.S.C., Order 53B, r. 1). The notice of motion must be supported by an affidavit, which should set out the reasons for failure to deliver the contract or the prescribed particulars of the contract, as the case may be, for registration (*Re Victoria Brick Works Co., Ltd., Seaton's Case* (1898), 5 Mans. 350; 9 Digest 318, 2002). For form of notice of motion (which will require minor amendment to conform with this Act), see Encyclopaedia of Court Forms, title Companies, Vol. 6, Form No. 110.

A copy of the documents required to be registered under this section, if certified by the registrar, is admissible in evidence (see section 426 (3)).

Definitions.—"Company limited by guarantee", "company limited by shares" (section 1 (2)); "officer who is in default" (section 440 (2)); "company", "document", "prescribed", "registrar of companies", "share", "the Court" (section 455 (1)); "instrument" (Stamp Act, 1891, section 122; 16 Halsbury's Statutes 655).

Commissions and Discounts, etc.

53. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

- (a) the payment of the commission is authorised by the articles; and
- (b) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(c) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice ; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.

(6) Nothing in this section shall affect the operation of subsection (2) of section three of the Gas Undertakings Act, 1934 (which limits the rate at which commission may be paid by gas undertakers).

NOTES

Subsections (1)–(5) of this section reproduce section 43 of the 1929 Act. The section permits the payment of limited commissions to underwriters, etc., of an issue of shares by the company, vendor, or promoter, continues former powers to pay brokerage, and forbids the application of shares or capital money otherwise in paying discount, allowances, or commissions. As to underwriting generally, see 5 Halsbury's Laws (2nd Edn.), pp. 160 *et seq.* ; as to disclosure in accounts, see the Eighth Schedule, *post* : as to payment of commission out of premiums on shares, see section 56 (2) (b).

Subsection (1): Payment of commission to directors.—See *Ural Caspian Oil Corporation v. Hume-Schroeder* (1913), *Times*, July 31.

Subscribing.—As to the meaning of the term, see *Arnison v. Smith* (1889), 41 Ch.D. 348, C.A., at p. 357 ; 9 Digest 114, 544.

Authorised by the articles.—See Table A, Part I, Art. 6, First Schedule. Authority in the memorandum alone is insufficient (*Re Bolivia Republic Exploration Syndicate, Ltd.*, [1914] 1 Ch. 139 ; 9 Digest 180, 1140).

Shares offered to the public . . . prospectus.—See generally, sections 38, 48.

Statements in lieu of prospectus.—See sections 30, 48.

Delivered before payment.—The statement in lieu, etc. (containing the required information), must be filed before allotment, otherwise the commission, etc., is not recoverable (*Andreae v. Zinc Mines of Great Britain*, [1918] 2 K.B. 454 ; 9 Digest 79, 1139). Private companies must also comply with these provisions (*Dominion of*

Canada General Trading and Investment Syndicate v. Brigstocke, [1911] 2 K.B. 648; 9 Digest 79, 1138).

Statement in prescribed form.—For the form prescribed, see Board of Trade Form No. 58 (S.R. & O. 1929 No. 823, Sched. see Appendix V, *post.*).

Subsection (2) : Discount.—As to power to issue shares at a discount, see section 57, *post.*

Subsection (4) : Vendor.—See Fourth Schedule, Part II. See also Table A, Part I, article 6, First Schedule.

Promoter.—See section 43 (5) (in another connection).

Subsection 6 : Gas Undertakings Act, 1934.—This Act has now been repealed by the Gas Act, 1948, section 71 and Schedule IV.

Definitions.—"Offering shares to the public" (section 55); "officer who is in default" (section 440 (2)); "articles", "company", "officer", "prescribed", "prospectus", "share" (section 455 (1)).

54. Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's shares.—(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company :

Provided that nothing in this section shall be taken to prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business ;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company ;
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

NOTES

The section combines section 45 of the 1929 Act, and section 73 of the 1947 Act. The last-mentioned section came into force on July 1, 1948.

Effect of changes.—The prohibition contained in section 45 of the 1929 Act on the purchase by a company of its own shares or the provision of financial assistance for that purpose (with an exception in favour of employees or the lending of money in the ordinary course of business), was extended by section 73 of the 1947 Act to the provision of money by a company to assist a subscription for the shares of its holding company.

Validity of security issued.—A debenture issued by a company in connection with a purchase of its shares, and thus in contravention of section 45 of the 1929 Act, was held nevertheless to be a valid security (*Victor Battery Co., Ltd. v. Curry's, Ltd.*, [1946] Ch. 242; [1946] 1 All E.R. 519; 2nd Digest Supp.).

Purchase of shares.—Apart from the penalties imposed for contravention, an act done in contravention of the section may be *ultra vires* (*Whiteman v. Sadler*, [1910] C.A. 514, at pp. 525, 526; 35 Digest 204, 294), but compare the *Victor Battery Co., Ltd.*, case *supra*. If the articles give the company power to purchase its own shares, the article giving such power is void (*Re Irish Provident Assurance Co., Ltd.*, [1913] 1 I.R. 352, C.A.; 9 Digest 617, f). "Purchase" does not include the acquisition of shares by subscription and allotment. (*Re V. G. M. Holdings, Ltd.*, [1942] Ch. 235; [1942] 1 All E.R. 224, C.A.; but the section extends to financial assistance in connection with a subscription).

For the position where a company already holds shares in its holding company, or where a company becomes a subsidiary of another company in which it is already a shareholder, see section 27, *ante*. As to the power of a company to acquire its shares on a reduction of capital, see section 66.

Disclosure in accounts.—See the Eighth Schedule.

Definitions.—“Holding company”, “subsidiary company” (section 154); “officer who is in default” (section 440 (2)); “company”, “director”, “officer” (section 455 (1)).

*Construction of References to offering Shares or Debentures
to the Public*

55. Construction of references to offering shares or debentures to the public.—(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) The foregoing subsection shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

- (a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and
- (b) the provisions of this Act relating to private companies shall be construed accordingly.

NOTES

The section reproduces section 68 (1) and (2) of the 1947 Act which came into force on July 1, 1948.

The effect of the section is that, in general, an offer of shares or debentures to any selected portion of the public, including existing members or debenture holders and clients of the person issuing the prospectus is, unless the contrary is expressly stated, an offer of those shares or debentures to the public. If, however, such an offer is not calculated to result in the shares, etc., coming into the ownership of persons other than those to whom they are offered, it will not be treated as an offer to the public. This includes any offer which can be regarded as a domestic concern of the persons making and receiving it, and, in particular, a prohibition in a company's articles against invitations to the public to subscribe for its shares or debentures does not preclude a *bona fide* invitation to existing members or debenture holders and similarly the prohibition imposed by section 28, *ante*, on any invitation to the public to subscribe for any shares or debentures of the company does not preclude a *bona fide* invitation to its members or debenture holders.

The object of these provisions is to ensure that the prospectus requirements of section 38 apply while not interfering unduly with domestic arrangements between a company and its members and debenture holders. In effect, the section deals with the question of the channel by which shares of a new issue reach the public. Normally, shares, etc., may reach the public in two ways: (i) by a prospectus issued by the company, and (ii) by an offer of sale. There is, however, a third way, and that is by “placings” (see also section 39, *ante*). Under the 1929 Act, the position was not at all clear as to what constituted an “offer” (see Cohen Report, Cmd. 6659, paragraphs 22, 25, 36, and 42), and it was considered that in some circumstances a document which offered shares to certain members of the public would not necessarily come under the prospectus requirements as being an offer for sale with the consequence that no prospectus was issued in these cases at all although it would have been desirable for one to be issued. To deal with that situation, the 1947 Act imposed a test of a different kind in order to clarify the position. It is therefore provided that any

document which places shares with a view to their being offered for sale to the public will come under the provisions of sections 38 or 45, as the case may be. Such offer, however, is not to be treated as an offer to the public if the shares, etc., do not come into the ownership of persons other than those to whom they are offered. This includes offers which can be regarded as a "domestic concern" of the persons concerned. Such types of "offer" are those set out in subsection (2), *supra*.

Permission to deal on stock exchange.—See section 51.

Certificates of exemption.—See section 39.

Definitions.—"Members" (section 26); "private company" (section 28); articles", "company", "debenture", "share" (section 455 (1)).

Issue of Shares at Premium and Discount and Redeemable Preference Shares

56. Application of premiums received on issue of shares.—(1)

Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off—

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of the Eighth Schedule to this Act shall be disregarded in determining the sum to be included in the share premium account.

NOTES

The section reproduces section 72 (1), (3) and (5) of the 1947 Act. That section came into force on July 1, 1948.

Effect of change.—No special authority is required to issue shares at a premium and under the 1929 Act, it appeared there was nothing to prevent the premium being treated as revenue and, therefore, available for distribution as dividend. This section now makes it clear that share premiums must not be distributed as dividend, neither can they be applied for any purposes other than those here specified (but see the proviso to subsection (3), *supra*).

Shares issued at a premium.—I.e., when the amount paid to take up the shares issued by the company is more than the nominal value of the shares.

Share premium account.—In future, where a company issues shares at a premium, it will be necessary for a share premium account to be kept, and under the provisions of subsection (2), *supra*, those premiums may be applied only for the purposes there given. As to redemption of redeemable preference shares, see section 58.

Reduction of share capital.—See generally, sections 66 to 71.

Share premium . . . paid up share capital.—The share capital is always recorded as the nominal value of the shares issued. In future, a share premium account becomes part of the paid up capital, although it is not represented by shares owned by members but is a book entry.

Paying up unissued shares . . . to be issued . . . as . . . bonus shares.—This may be effected in accounting by transferring the sum concerned from share premium account to share capital account.

Subsection (3).—If the share premium account is identifiable at the time the section comes into force, it is dealt with in the manner provided for in the section, notwithstanding that the account existed before the commencement of the Act.

Company's reserves.—Under the proviso to subsection (3) of this section, there are other ways in which share premiums could properly be used (as to which, see the Eighth Schedule).

Disclosure requirements.—See the Eighth Schedule, *post*. The reference would appear to relate to Part IV of the Schedule).

Definitions.—"Share capital" (section 59); "company", "share" (section 455 (1)); "commencement of this Act" (section 462 (2)).

57. Power to issue shares at a discount.—(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the court ;
- (b) the resolution must specify the maximum rate of discount at which the shares are to be issued ;
- (c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business ;
- (d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section reproduces section 47 of the 1929 Act.

The effect of the section is that a company may now issue shares at a discount in the strictly circumscribed conditions here stated. The shares so issued must be of a class openly issued, the issue must be sanctioned by the company in general meeting by a resolution specifying the maximum rate of discount, and passed at least a year after the company has commenced business, the issue must then be sanctioned by the Court, and the shares must be issued within a month of such sanction unless that time is extended by the Court (subsection (1)). Particulars of the discount must be shown in the prospectus relating to the issue, with a penalty imposed for default (subsection (3)). Application to the Court is by petition (R.S.C., Order 53B, r. 5 (g)), and must be supported by affidavit unless otherwise ordered (*ibid.*, r. 3; Order 38, r. 1). The affidavits should set out the terms of the proposed issue, and facts proving that shares of a similar character are valued approximately at the price at which it is proposed to issue them. Unless the Court otherwise directs, every order sanctioning the issue of shares at a discount must contain a direction that an office copy of the order is to be delivered to the Registrar for registration within ten days of the making of the order or such further time as the Court may allow and that the order is not to take effect till such office copy has been delivered (Order 53B, r. 12); application to extend time is by summons, *ibid.* r. 8 (m), S.I. 1948 No. 1756.

Accountancy aspect.—It should be noted that by section 53 payment of indemnity and brokerage commissions is allowed in the conditions there stated. This section authorises the issue of shares at a discount. A discount on shares in effect, means that the purchaser derives a monetary advantage equivalent to the amount of the discount, that is to say, the agreed purchase price of the shares is, in fact, less than its nominal value. From an accounting point of view, the amount of discount is placed to a "share discount account" (usually on final call) and credited to the member's account.

The member will be charged with the "calls", but will only be required to pay the difference on his account. The share capital account, however, will show at par. See further, as to disclosure in accounts, the Eighth Schedule.

The value of these provisions is that a company whose shares are quoted below par on the stock exchange are enabled to make a further issue of shares in circumstances where otherwise it might not be able to find willing purchasers.

Illegality.—Apart from the provisions of this section, the issue of shares at a discount is still illegal, as it was before 1929, and a contract to issue shares otherwise than in accordance with the section is void (*Welton v. Saffery*, [1897] A.C. 299, at p. 321; 9 Digest 292, 1817). If shares are, nevertheless, issued, the directors are accountable to the company for the discount allowed (*Hirsche v. Sims*, [1894] A.C. 654, P.C.; 9 Digest 297, 1842). See generally, 5 Halsbury's Laws (2nd Edn.), pp. 158 *et seq.*

Date of issue of prospectus.—Cf. section 37 (date of publication).

Cross-references.—As to when a company is entitled to commence business, see section 109. As to general meetings, see sections 130 *et seq.* As to classes of shares, see sections 59 *et seq.*

Definitions.—"Default fine" (section 440 (1)); "officer who is in default" (section 440 (2)); "company", "prospectus", "share", "the Court" (section 455 (1)).

58. Power to issue redeemable preference shares.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;
- (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

NOTES

The section combines section 46 (1) and (3) to (5) of the 1929 Act and sections 71 (1), (2) and (4) and 72 (4) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The section permits a company to issue redeemable preference shares, provided power to do so is contained in the company's articles in the circumstances here set out. As in the corresponding provision of the 1929 Act, such shares may be redeemed only (1) out of profits; or (2) out of the proceeds of a fresh issue made for the purpose. The provisions of section 46 of the 1929 Act have now, however, been amended in certain details.

Effect of changes.—(1) The premium, if any, may be provided out of the company's share premium account (see section 56, *ante*), as well as out of profits; (2) the company need only carry to the capital redemption reserve fund out of profits a sum equal to the nominal amount of the shares redeemed instead of a sum equal to the amount applied in redeeming the shares, as previously required; (3) a redemption of preference shares no longer amounts to a reduction of the company's share capital; (4) the power conferred by section 46 (5) of the 1929 Act to apply the capital redemption reserve fund in paying up unissued shares of the company to be issued as bonus shares is now exercisable whether or not new shares have been issued in pursuance of subsection (4), *supra*, and is not limited by reference to the amount of any shares so issued.

Redemption out of profits.—It should be noted that the profits so set aside (i.e., for redemption of shares) cannot be utilised at any time to pay dividends or otherwise applied for any revenue purpose except as provided for in the section.

Redemption out of proceeds of fresh issue.—In the event of the proceeds of a fresh issue being utilised to redeem shares, the need for a capital redemption reserve fund will not arise, although there is nothing in these provisions to prevent a company from redeeming shares partly out of the proceeds of a fresh issue and the balance out of profits. In that event, a capital redemption reserve fund must be established to the extent that profits have been so utilised. As to disclosure in accounts, see the Eighth Schedule. As to statement in the balance sheet specifying redeemable preference shares issued (re-enacting section 46 (2) of the 1929 Act as amended by section 71 (3) of the 1947 Act), see the Eighth Schedule, *post*, paragraph 2.

Subsection (2) : provided by the articles.—Cf. Table A, Part I, article 3, First Schedule.

Subsection (5) : Paying up unissued shares . . . as fully paid bonus shares.—The effect from an accounting point of view is that the capital redemption reserve fund will disappear as a separate item on the balance sheet and will become merged with the issued share capital. Bonus shares are usually issued instead of declaring larger dividends. In the case of the capital redemption reserve fund, however, since it has no revenue character, a dividend cannot be paid thereout. Nevertheless, the section allows that fund to remain under the control of the shareholders to a limited extent in that they may apply the fund in discharge of fully paid bonus shares. By this means, no money passes between shareholders and the company, since the transaction is merely an accounting entry. See also Table A, Part I, article 128, First Schedule.

Subsection (3) : Reduction of share capital.—See section 66.

Definitions.—"Company limited by shares" (section 1 (2)); "member" (section 26), "share premium account" (section 56); "articles", "company", "shares" (section 455 (1)). See further as to preference share capital, section 61.

Miscellaneous Provisions as to Share Capital

59. Power of company to arrange for different amounts being paid on shares.—A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

NOTES

The section reproduces section 48 of the 1929 Act.

Calls on shares.—See First Schedule, Table A, Part I, article 20.

Moneys paid in advance of calls.—See First Schedule, Table A, Part I, article 21. Such shareholders are in a different class from fully-paid shareholders (*Re United Provident Assurance Co., Ltd.*, [1910] 2 Ch. 477; 10 Digest 1058, 7406).

The exercise of the power of acceptance of such moneys is valid even though it confers a collateral advantage on the directors (*Poole, Jackson and Whyte's Case* (1878), 9 Ch. D. 322, C.A.; 9 Digest 338, 2138), provided it is not exercised solely for their benefit (*Sykes' Case* (1872), L.R. 13 Eq. 255; 9 Digest 498, 3273). The shareholder is a creditor of the company to the extent to which the money is paid in advance, but he is not entitled to repayment, and the company cannot repay it unless the articles so provide [*Lock v. Queensland Investment and Land Mortgage Co.*, [1896] 1 Ch. 397, C.A.; affirmed, [1896] A.C. 461; 9 Digest 338, 2137]. In case of winding-up, however, such shareholders are entitled to repayment with interest before any payment is made in respect of other shares ranking *pari passu* with theirs (*Re Exchange Drapery Co.* (1888), 38 Ch. D. 171; 10 Digest 1002, 6961).

Larger amount is paid up on some shares than others.—See First Schedule, Table A, Part I, article 118.

Definitions.—"Member" (section 26); "articles", "company", "share" (section 455 (1)).

60. Reserve liability of limited company.—A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

NOTES

The section reproduces section 49 of the 1929 Act.

The effect of the section is that reserve capital cannot be called up except in the event of the company being wound up. The only capital of a company that may be so dealt with is that part which has not yet been called up. This type of capital is not under the control of the directors since it cannot be charged in any way (*Re Mayfair Property Co., Bartlett v. Mayfair Property Co.* [1898] 2 Ch. 28, C.A.; 10 Digest 734, 4593). In this sense reserve capital may be regarded as enhancing the financial stability of a company.

A member's liability cannot be increased except under the conditions mentioned in section 22, and it should also be noted that *all* members are liable for a company's debts if their numbers fall below the required minimum under section 31. As to an unlimited company providing for reserve share capital, see section 64.

Definitions.—"Limited company" (section 1 (2)); "special resolution" (section 141), "company" (section 455 (1)).

61. Power of company limited by shares to alter its share capital.—(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

NOTES

The section reproduces section 50 of the 1929 Act.

The section permits the increase, consolidation, division, conversion into stock and reconversion of all or any of its share capital by any company having a share capital. The power must be exercised in general meeting, and may be exercised only if authorised by the articles.

Increase of share capital.—It is not necessary for the memorandum to give specific authority to increase capital (*Re Dextre Patent Packing and Rubber Co.* (1903), 88 L.T. 791; 9 Digest 151, 856), but the power must be contained in the articles, and if necessary, may be altered with that purpose in view, a single special resolution authorising the particular operation being effective without a previous resolution altering the articles (*Campbell's Case* (1873), 9 Ch. App. 1, at p. 21; 9 Digest 146, 825). The articles normally state the type of resolution required to increase capital and under Table A, Part I, article 44 (see First Schedule, *post*) an ordinary resolution is sufficient. As to notice of increase of share capital to be given to the Registrar, see section 63, and as to modification of the rights attaching to shares, see Table A, Part I, articles 2 to 4. An increase of capital may take the form of preference shares, unless this would be inconsistent with the memorandum (*Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361, C.A.; 9 Digest 228, 1459). As to redeemable preference shares, see section 58. Usually capital is increased because all the authorised share capital has been issued, but there is nothing to prevent an increase of nominal capital although the authorised share capital has not been fully issued.

Consolidation and division of share capital.—I.e., the alteration of the denomination of the share, for example, by converting 10 £1 shares into 1 £10 share, or converting £10 shares into 5/- shares. This procedure may be adopted by a company to facilitate market dealings in the shares. Certain of the company's records must be altered, e.g., the share register and old certificates will have to be exchanged for new ones. From an accounting point of view, a conversion or subdivision is effected by a transfer from one type of capital account to another. If the articles are silent on the matter, only a special resolution to alter the articles is necessary (*Campbell's Case, supra*). As to consolidation of share capital on a reorganisation, see section 206 (6).

Conversion into stock or reconversion from stock to fully paid shares.—Only fully paid shares may be converted into stock, and any issue of partly paid stock is void (*Re Home and Foreign Investment and Agency Co., Ltd.*, [1912] 1 Ch. 72; 9 Digest 226, 1448). Stock is not divided into equal parts (like shares of specified denominations) and consequently need not be numbered. Stock can be bought in fractions of any amount while the price of shares is related to its denomination. It should be noted that stock possesses the characteristics of shares and holders are entitled to vote since they are members of the company (see First Schedule, Table A, Part I, articles 40 to 43). Conversion is effected in the financial records merely by transferring the amount from the share capital account to the capital stock account and may be either registered or unregistered in the books of the company. In either case, the stock may be preferred, guaranteed or deferred.

Subdivision of shares.—See First Schedule, Table A, Part I, article 45 (b). Care must be taken to see that the voting rights per share of a class of shareholders are not varied without the requisite consent of article 4 of Table A, Part I, or a similar article, *Greenhalgh v. Ardenne Cinemas Ltd.*, [1946] 1 All E.R. 512, 516, C.A.; 2nd Digest Supp.; and cf. section 72. As to subdivision of shares in the course of an arrangement pursuant to section 206, see *Re Guardian Assurance Co.*, [1917] 1 Ch. 431, C.A.; 10 Digest 1054, 7370.

Cancellation of shares.—See First Schedule, Table A, Part I, article 45 (c). Only unissued shares may be cancelled, thereby reducing the nominal capital. This is not a reduction of capital so as to require confirmation by the Court (subsection (3) *supra*). See also section 66.

Alteration of memorandum.—As to the issue of copies of the memorandum after the alteration, see section 25. For other provisions as to alteration of memorandum, see sections 5, 23.

Other related sections.—Section 62 (notice of registration in case of conversion, etc.); sections 110, 124 (register of members). For the provisions of Table A relating to conversion, etc., see the First Schedule, Table A, Part I, articles, 40, 44, 45.

Share capital.—Capital may be divided into the following several classes, (i). nominal or authorised; (ii). issued or subscribed; (iii). paid up or called up; (iv). reserve. It may also consist of stock. As to disclosure in accounts, see the Eighth Schedule. See further as to capital, Magnus and Estrin on the Companies Act, 1947, O. ACT.—5

note (a) to section 2. As to statement of the several classes of capital in the memorandum see section 2, *ante*, and with respect to rights, etc., see the First Schedule, A, Part I, article 2.

General meetings.—See sections 130 *et seq.*

Reduction of share capital.—See section 66.

Definitions.—"Company limited by guarantee," "company limited by shares" (section 1 (2)); "articles", "company", "memorandum", "share", "stock" (section 455 (1)).

62. Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.—(1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares ; or
- (b) converted any shares into stock ; or
- (c) re-converted stock into shares ; or
- (d) subdivided its shares or any of them ; or
- (e) redeemed any redeemable preference shares ; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section sixty-six of this Act ;

it shall within one month after so doing give notice thereof to the registrar of companies specifying, as the case may be, the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section reproduces section 51 of the 1929 Act.

Consolidation and division of share capital.—See section 61 (1) (b).

Conversion of shares into stock.—See section 61 (1) (c).

Subdivision of shares.—See section 61 (1) (d).

Redeemable preference shares.—See section 58.

Cancellation of shares.—See section 6 (1) (e), and section 66.

As to notice of increase of share capital, see section 63.

Form of notice.—The form prescribed is Board of Trade Form No. 28 (S.R. & O. 1929, No. 823, Schedule, see Appendix V, *post.*)

Definitions.—"Officer who is in default", "default fine" (section 440) ; "company", "officer", "registrar of companies", "share", "stock" (section 455 (1)).

63. Notice of increase of share capital.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within fifteen days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section reproduces section 52 of the 1929 Act. The section requires notice to the registrar of an increase of share capital under section 61 (1) (a), *ante*. It will be noted that whereas the notice to be given under section 62, in respect of other alterations is a month's notice, the notice under this section is a fifteen days' notice.

Form of notice.—The form prescribed is Board of Trade Form No. 10 (S. R. & O. 1929, No. 823, Schedule, see Appendix V, *post.*)

Definitions.—"Officer who is in default", "default fine" (section 440) ; "company", "officer", "prescribed", "registrar", "share", "stock" (section 455 (1)).

64. Power of unlimited company to provide for reserve share capital on re-registration. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up ;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

NOTES

The section reproduces section 53 of the 1929 Act. The provisions of the section are analogous to those under section 60, *ante*, in the case of a limited company with respect to reserve capital.

Registration of unlimited company as limited.—See section 16.

Increase of nominal amount of share capital.—This method of increasing its share capital is not open to other companies (see section 61, *ante*). As to notice to the Registrar of an increase, see section 63.

Definitions.—" Limited company ", " unlimited company " (section 1 (2)) ; " company ", " share " (section 455 (1)).

65. Power of company to pay interest out of capital in certain cases.—(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant :

Provided that—

- (a) no such payment shall be made unless it is authorised by the articles or by special resolution ;
- (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade ;
- (c) before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry ;
- (d) the payment shall be made only for such period as may be determined by the Board of Trade, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided ;
- (e) the rate of interest shall in no case exceed four per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury ;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid ;
- (g) nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

(2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

The section combines section 54 (1) of the 1929 Act and section 120 (3) of the 1947 Act. The last-mentioned provision came into force on December 1, 1947.

Effect of changes.—The provisions of section 54 of the 1929 Act have been substantially reproduced in this section. Those provisions have been effected by section 120 (3) of the 1947 Act in one minor respect. Paragraph (e) of the proviso to subsection (1) of section 54 of the 1929 Act provided for the variation of the rate of interest by Order in Council. This is now effected by order of the Treasury and is made by statutory instrument. Paragraph (g) of that proviso which required the accounts to show the share capital on which such payments were made and the rate of interest, is not here re-enacted, but is provided for in the Eighth Schedule, *post*, paragraph 2 (b).

The payment of interest under these provisions needs careful consideration since it is only in special circumstances that it may be paid to shareholders out of capital. The particular difference between the payment of interest to, for example, loan creditors and shareholders is that in the former case the interest may be paid whether or not there are any profits available, which in effect means that it may be paid out of capital. Companies engaged in some constructional work and whose capital was employed in that way would, but for these provisions, be prohibited from paying interest while there was no revenue available for that purpose. The section allows interest to be treated as part of the capital cost of construction in the conditions here stated. As to disclosure in accounts, see the Eighth Schedule.

Subsection (1) proviso (a) : Authorised by the articles.—Cf. First Schedule, Table A, Part I, article 116 which forbids the payments of dividends out of capital. Table A does not authorise the payments referred to in the section, and in cases where its terms apply a special resolution will be needed ; under Table A interest is allowed to a member in accordance with article 21, but not out of capital.

Proviso (e) : Variation of interest.—See note on effect of changes, *supra*. The power is exercised by statutory instrument (see the Statutory Instruments Act, 1946 section 5 (2) and 6 (2) ; 39 Halsbury's Statutes 786, 787. As to copies being laid before Parliament, see *ibid.*, sections 1 (2) and 4 (3), 39 Halsbury's Statutes 784, 786. The Act came into force on January 1, 1948 (see S.I., 1948, Nos. 1, 2).

Indian Railways Act, 1894.—The Act applies to a company registered under the Companies Acts and formed for the purpose of making and working a railway in India, whether alone or in conjunction with other purposes (see *ibid.*, section 2 ; 5 Halsbury's Statutes 475 ; Interpretation Act, 1889, section 38 (1), 18 Halsbury's Statutes 1005). The Act gives powers to such companies very similar to those given by the present sections.

Definitions.—"Special resolution" (section 141) ; "articles", "company", "share" (section 455 (1)) ; "statutory instrument" (Statutory Instruments Act, 1946, section 1 ; 39 Halsbury's Statutes 784).

Reduction of Share Capital

66. Special resolution for reduction of share capital.—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets ; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company ;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

NOTES

The section reproduces section 55 of the 1929 Act.

General note.—The need for reducing capital may arise in various ways, for example, trading losses, heavy capital expenses (e.g., preliminary expenses), and assets of reduced or doubtful value. As a result, the original capital may either have become lost, or a company may find that it has more resources than it can profitably employ. In either case, the need may arise to adjust the relation between capital and assets.

Unlike an individual, a company has no power to write off losses of this nature or to return capital except in the manner provided by this Act (see *Hill v. Permanent Trustee Co. of New South Wales, Ltd.*, [1930] A.C. 72 P.C., ; Digest Supp.), and this can be done as indicated in subsection (1) of this section. It should be noted that any scheme of reduction is subject to the provisions of section 70, which should also be read in conjunction with section 22, or in the event of a new company being formed which consists of the old members, to the provisions of section 287. From an accounting point of view in dealing with a reduction scheme, the share capital account may be debited with the difference between the paid up and reduced value of the shares and a similar sum credited to a capital reduction account. The value of the assets eliminated or reduced under the scheme (including any losses) can be charged to that account. As to accounts disclosure, see the Eighth Schedule.

Reduction of capital.—"Capital" includes nominal share capital, whether issued or unissued, and, if issued, whether fully paid or not, and "share" includes "stock" (section 455 (1), *post*), so that a company may reduce its stock (see *Re Allsopp & Sons, Ltd.* (1903), 51 W.R. 644, C.A.; 9 Digest 149, 839). Every reduction of capital must reduce the nominal capital, and a reduction of unissued capital may be combined with a reduction of issued capital, while issued capital may be reduced, whether fully paid or not (*Re Anglo-French Exploration Co.*, [1902] 2 Ch. 845, at p. 852; 9 Digest 153, 867). And see generally 5 Halsbury's Laws (2nd edn.), pp. 170 *et seq.*

Alteration of memorandum.—As to issue of copies of memorandum after an alteration, see section 25. For other provisions relating to alteration of memorandum, see sections 4, 5, 23.

Confirmation by the Court.—See sections 67, 68.

Definitions.—"Company limited by guarantee", "company limited by shares" (section 1 (2)); "special resolution" (section 141); "articles", "company", "memorandum", "share", "the Court" (section 455 (1)).

67. Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.—(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection :—

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction ;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction ;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount :—

- (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

- (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

NOTES

The section reproduces section 56 of the 1929 Act, as varied by section 106 of the 1947 Act, which repealed the requirement of subsection (1) that application to the Court to confirm a reduction be by petition. Section 106 came into force on July 1, 1948.

Subsection (1) : Application to the Court.—The application is made to the Court having jurisdiction to wind up the company (see definition of "Court", section 455 (1)). As to the Courts having such jurisdiction, see section 218. The application is made by petition under R.S.C., Order 53B, r. 5 (d), S.I. 1948 No. 1756. It is not essential to prove that capital proposed to be cancelled is lost or unrepresented by available assets, but the Court considers two questions: whether the sanction ought to be refused out of regard to the interests of members of the public induced to take shares in the company, and whether the reduction is fair between classes of shareholders, *Poole v. National Bank of China, Ltd.*, [1907] A.C. 229; 9 Digest 149, 842; *Carruth v. Imperial Chemical Industries, Ltd.*, [1937] A.C. 707; [1937] 2 All E.R. 422 H.L.; Digest Supp.

Subsection (2) : Payment of paid-up share capital.—See *Re Dido Pier Co.*, [1891] 2 Ch. 354; 9 Digest 154, 869. The cancellation of paid-up preference shares on the terms of the articles, the amount of paid-up capital being paid out of a reserve consisting of profits, does not involve the payment to any shareholder of any paid-up share capital. The redemption of redeemable preference shares under section 58 is not a reduction of authorised capital (subsection (3) of that section).

Any other case, if the Court so directs.—The Court will only so direct where a strong case is made out (*Re Meux's Brewery Co.*, [1919] 1 Ch. 28; 9 Digest 164, 970).

List of creditors.—The list must be settled even if there is evidence that there are no creditors (*Re Lamson Store Service Co., Ltd.*, *Re National Reversionary Investment Co., Ltd.*, [1895] 2 Ch. 726; 9 Digest 164, 973). Cf., as to rights of creditors not entered in list and ignorant of the proceedings, section 70.

Consent of creditors.—Some evidence of consent is necessary (*Re Patent Ventilating Granary Co.* (1879), 12 Ch.D. 254; 9 Digest 165, 982). In *Re Hydraulic Power and Smelting Co.*, [1914] 2 Ch. 187; 9 Digest 165, 984, an extraordinary resolution passed by 87 per cent of the holders of bearer debentures was accepted as evidence of the consent of such holders.

Appropriation by company.—As to what constitutes a sufficient appropriation, see *Arizona Copper Co., Ltd., Petitioners*, [1926] S.C. 315.

Definitions.—"Resolution for reducing share capital" (section 66); "commencement of the winding up" (section 229); "company", "share", "the Court" (section 455 (1)).

68. Order confirming reduction and powers of court on making such order.—(1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court makes any such order, it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

NOTES

The section reproduces section 57 of the 1929 Act.

Consent of creditors.—As to evidence of such consent, see note to section 67. Except in the cases here specified, the Court may make the order without regard to creditors, unless they can show a strong case (see *Re Meux's Brewery Co.*, [1919] 1 Ch. 28; 9 Digest 164, 970).

Power of court to make order.—The Court's power to confirm is discretionary, and conditions may be imposed (*British and American Trustee and Finance Corporation v. Couper*, [1894] A.C. 399; 9 Digest 149, 840). For examples of conditions which have been imposed in the past, see 5 Halsbury's Laws (2nd Edn.), p. 183, and cases there cited.

"And reduced".—Before the 1929 Act, the addition of these words was obligatory, unless dispensed with by the Court. They need not now be added unless the Court so orders.

Costs.—In a proper case, the Court will allow the costs of a dissentient shareholder, and as far as possible the Court encourages helpful criticism by such a shareholder. (*Re De la Rue (Thomas) & Co., Ltd. and Reduced*, [1911] 2 Ch. 361; 9 Digest 160, 931).

Definitions.—"Company", "the Court" (section 455 (1)).

69. Registration of order and minute of reduction.—(1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section twenty-five of this Act.

NOTES

The section reproduces section 58 of the 1929 Act.

Form of minutes.—Apart from the matters mentioned in the section, the modern practice is also to require the minutes to state the amounts from and to which the capital is reduced, and the arithmetical numbering of the shares remaining after the reduction (if the shares are numbered—see section 74, *post*). For form of minutes in cases under the 1929 Act, see *Re Harrods (Buenos Aires), Ltd.*, [1936] 2 All E.R. 1651; Digest Supp. (reduction, increase, subdivision and consolidation); *Re Holland and Webb, Ltd.*, [1936] 3 All E.R. 944; Digest Supp. (reduction and consolidation).

Approval of Court.—The usual practice is to embody the minute in the confirmatory order (see title Companies, 6 Ency. Court Forms, Form No. 45, p. 154,

where the practice is shown). This constitutes sufficient approval (*Re Sharp, Stewart & Co.* (1867), L.R. 5 Eq. 155, at p. 159; 9 Digest 169, 1041).

Publication of notice.—This cannot be dispensed with (*Re London Steamboat Co., Ltd.* (1883), 31 W.R. 781; 9 Digest 168, 1031), but is only necessary to advertise the registration; the complete minute need not be set out (*Re Oceana Development Co., Ltd.* (1912), 56 Sol. Jo. 537; 9 Digest 167, 1015).

Registrar's certificate.—Where the special resolution has not been properly passed (*Ladies' Dress Association, Ltd. v. Pulbrook*, [1900] 2 Q.B. 376, C.A.; 9 Digest 168, 1029), or the company has no power under its articles to reduce its capital, the defect is cured by the certificate (*Re Walker and Smith, Ltd.* (1903), 72 L.J.Ch. 572; 9 Digest 168, 1030). The conclusiveness of the minute renders it unnecessary, on future reductions, to produce evidence as to the history of the company's capital before the previous reduction.

Definitions.—"Resolution for reducing share capital" (sections 66 (2), 455 (1)); "company", "memorandum", "registrar of companies", "share", "the Court" (section 455 (1)).

70. Liability of members in respect of reduced shares.—(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

NOTES

The section reproduces section 59 of the 1929 Act.

Inability to pay debts.—See section 223, *post*.

Definitions.—"Member" (section 26); "contributory" (section 213); "company", "share", "the Court" (section 455 (1)).

71. Penalty for concealing name of creditor, etc. If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour.

NOTES

The section corresponds with section 60 of the 1929 Act, the description of the persons liable under the section having been amended by section 122 and the Seventh Schedule of the 1947 Act. The effect of the section remains unaltered.

Production of books.—Cf. section 441.

Definitions.—"Company", "officer" (section 455 (1)).

Variation of Shareholders' Rights

72. Rights of holders of special classes of shares.—(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

NOTES

The section reproduces section 61 of the 1929 Act, except that the time within which an application to the Court under subsection (2) must be made is extended from seven days to twenty-one days by section 10 of the 1947 Act. The last-mentioned section came into force on December 1, 1947.

Provision for variation in memorandum or articles.—For a form of such provision, see the First Schedule, Table A, Part I, article 4.

Application to the Court.—The application is by petition (see R.S.C., Order 53B, r. 5 (f)). It is made to the Court having jurisdiction to wind up the Company (see section 455 (1), *post*). Unless otherwise ordered, it must be supported by affidavit (R.S.C., Order 38, r. 1; Order 53B, r. 3). On the presentation of the petition, a summons for directions is taken out (*ibid.*, Order 53B, r. 10 (1)). For form of petition, see Encyclopaedia of Court Forms, title Companies, Vol. 6, Form No. 61, p. 165.

Qualification of applicant.—The petitioner must be qualified as holding the requisite percentage of shares of the class at the commencement of proceedings, *Re Suburban and Provincial Stores, Ltd.*, [1943] 1 All E.R. 297.

Subsection (2) : appoint in writing.—The authority must not only be completed but communicated to the petitioner before the proceedings are commenced, *Re Sound City (Films), Ltd.*, [1947] Ch. 169; [1946] 2 All E.R. 521; 2nd Digest Supp.

Definitions.—"Officer who is in default", "default fine" (section 440); "articles", "company", "memorandum", "officers", "registrar of companies", "share", "the Court" (section 455 (1)).

Transfer of Shares and Debentures, Evidence of Title, etc.

73. Nature of shares.—The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

NOTES

The section reproduces section 62 (1) of the 1929 Act.

Personal estate.—Shares are “goods” which may be ordered to be sold under R.S.C., Order 50, r. 2 (*Evans v. Davies*, [1893] 2 Ch. 216; 9 Digest 225, 1443). Shares transferable only by deed are “things in action” within the meaning of the Bankruptcy Act, 1914, section 38 (c) (1 Halsbury’s Statutes 644) (*Colonial Bank v. Whinney* (1886), 11 App. Cas. 426, H.L.; 5 Digest 749, 6464).

Transferable in manner provided by the articles.—See, e.g., First Schedule Table A, Part I, articles 22 to 28.

Definitions.—“Member” (section 26 “articles”, “company” (section 455 (1)).

74. Numbering of shares.—Each share in a company having a share capital shall be distinguished by its appropriate number :

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

NOTES

The section combines section 62 (2) of the 1929 Act and section 69 (1) of the 1947 Act. The last-mentioned provision came into force on December 1, 1947.

Effect of change.—While in the normal way a share must have a distinctive number, that number may be dispensed with if (i) it is fully paid, and (ii) it ranks *pari passu* with other shares of that class. Consequential amendments are embodied in sections 110 (1), and 112 (1).

It should be noted that the exemption applies only so long as these conditions are met.

Shares issued on call should have distinctive numbers until fully paid. If new shares which are not fully paid up are issued of a class in which the numbering has been dispensed with, it would appear that all the shares of that class would need to be numbered.

It should also be noted that under section 61 (1) (c), *ante*, fully paid up shares may be converted into stock (in which event, distinguishing numbers are not required).

Alteration of share capital.—See section 61.

Appropriate number.—This is usually called the “denoting number”. The provision is merely directory, to enable the title of particular persons to be traced (*Ind’s Case* (1872), 7 Ch. App. 485; 9 Digest 363, 2314). The provisions of this section as to numbering do not apply in the case of a joint stock company registering under Part VIII, *post*, where shares are not numbered (see section 394 (3) (b)).

Pari passu for all purposes.—Shares which rank *pari passu* are shares which rank equally in all respects, i.e., that no share of the same class has a priority over another share in that class. If there is any provision attaching to the issue of shares which allows some to rank in priority to others of the same class, then the provisions of this section will not apply, and the obligation to number such shares under sections 110 and 112, will continue.

Definitions.—“Company”, “share” (section 455 (1)).

75. Transfer not to be registered except on production of instrument of transfer.—Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company :

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

NOTES

The section reproduces section 63 of the 1929 Act.

Transfer of shares.—See also section 80 (1), *post*, and the First Schedule, Table A, Part I, articles 22 to 28.

Financial control.—See references noted to section 38 as to the requirement of the Treasury's permission to a transfer to residents outside the sterling area, etc.

Transmission by operation of law.—See sections 76, 82, and the First Schedule, Table A, Part I, articles 29 to 32.

Instrument of transfer.—The articles usually require that shares shall be transferred in a form set out or in any usual or common form (see, e.g., the First Schedule, Table A, Part I, article 23. When the articles require the common form, registration of a transfer cannot be refused because it omits particulars which would be found in the common form but are in the circumstances immaterial (*Re Letherby and Christopher, Ltd.*, [1904] 1 Ch. 815; 9 Digest 360, 2289). See generally, 5 Halsbury's Laws (2nd Edn.), pp. 275 *et seq.*

Definitions.—"Articles", "company", "debenture", "share" (section 455 (1)).

76. Transfer by personal representative.—A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

NOTES

The section reproduces section 64 of the 1929 Act.

Personal representative.—The personal representative of a deceased member do not become members unless themselves registered. If they are so registered, they may become personally liable for calls (*Buchan's Case* (1879), 4 App. Cas. 549, 583, H.L.; 9 Digest 202, 1252). As to evidence of probate, see section 82, *post*.

Definitions.—"Member" (section 26); "company", "share" (section 455 (1)).

77. Registration of transfer at request of transferor.—On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

NOTES

The section reproduces section 65 of the 1929 Act.

Registration.—The fact that the section empowers the transferor to make the application does not affect the transferee's duty to obtain registration (*Skinner v. City of London Marine Insurance Corporation* (1885), 14 Q.B.D. 882, C.A.; 9 Digest 350, 2216). The transferor may enforce the registration by obtaining an order for rectification of the register (*Re Stranton Iron and Steel Co.* (1873), L.R. 16 Eq. 559; 9 Digest 218, 1371).

Register of members.—See section 110.

78. Notice of refusal to register transfer.—(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section reproduces section 66 of the 1929 Act except for a minor amendment in subsection (2) effected by section 105 (1) and the Fifth Schedule of the 1947 Act in regard to the persons liable for default thereunder. The last-mentioned provision came into force on July 1, 1948.

Notice of refusal.—The company is under no similar obligation in the case of the transferor (*Gustard's Case* (1869), L.R. 8 Eq. 438; 9 Digest 271, 1672).

Send.—See Interpretation Act, 1889, s. 26 (18 Halsbury's Statutes 1002); properly addressing, prepaying and posting a letter containing the notice should suffice.

Definitions.—"Default fine", "officer who is in default" (section 440); "company", "debenture", "officer", "share" (section 455 (1)).

79. Certification of transfers.—(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect ;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf ; and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised ;

(c) a certification shall be deemed to be signed by any person if—

(i) it purports to be authenticated by his signature or initials (whether handwritten or not) ; and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

NOTES

The section reproduces section 70 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that, while a certification of a transfer by a company does not involve the company in an absolute liability, persons who suffer as a result of fraud or negligence have a remedy against the company. This is on the principle that a company is responsible for the acts of its authorised agents. It should be noted that, by certification, a company does not warrant the genuineness of the documents.

Certification.—A transfer of shares is normally completed by registration (see generally, 5 Halsbury's Laws (2nd Edn.), pp. 268 *et seq.*). Where, however, a shareholder sells some only of the shares comprised in one certificate, or sells some to one person and the rest to another, on the deposit of the transfer and certificate with the company, the secretary usually notes on the transfer that the share certificate has been lodged and this is accepted by the buyer's brokers. This practice is known as “certification of transfers”. The buyer in due course receives a certificate for the number of shares he has actually bought and the seller one for the balance, or as the case may be. The wording of the certification differs in practice. In *Bishop v. Balkis Consolidated Co., Ltd.* (1890), 25 Q.B.D. 512, at p. 519, C.A. ; 9 Digest 381, 2417, it was held that such certification was a representation by the company that *prima facie* documents of title had been produced, but this was overruled in *Whitechurch (George), Ltd. v. Cavanagh*, [1902] A.C. 117 ; 9 Digest 382, 2419, which decision was followed in *Kleinwort, Sons & Co. v. Associated Automatic Machine Corporation, Ltd.* (1934), 151 L.T. 1, H.L. ; Digest Supp. The present section overrules these last decisions and restores the position as laid down in *Bishop v. Balkis Consolidated Co., Ltd.*, *supra*.

Instrument of transfer.—See section 75, and the First Schedule, Table A, Part I, articles 22 to 28.

Documents showing a *prima facie* title.—I.e., a duly executed instrument of transfer and the relevant share certificate. The certification amounts to a representation by the company that these documents have been produced, but not that the transferor had any title.

Signature of person authorised.—The practice regarding the signature of the certification differs widely. It is sometimes signed by the secretary or the registrar himself, but more often by an officer or the clerk of the company or of the registrar, who signs on behalf of the secretary or the registrar, without any description of his official position or title, and sometimes the certification is merely initialled. Frequently, a rubber stamp is used. Whatever means are adopted, if the signature or initials are affixed by any of the persons here named, the certification is deemed to be made by the company.

Definitions.—"Company", "debenture", "officer", "share" (section 455 (1)); "body corporate" (section 455 (3)).

80. Duties of company with respect to issue of certificates.—(1) Every company shall, within two months after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

NOTES

The section reproduces section 67 of the 1929 Act, except for a minor amendment in subsection (2) effected by section 105 (1) and the Fifth Schedule to the 1947 Act, as to the persons liable for default. The last-mentioned provision came into force on July 1, 1948.

Issue of certificate.—Apart from this provision, which was first introduced by section 67 of the 1929 Act, a shareholder was entitled to delivery of his certificate within a reasonable time (*Burdett v. Standard Exploration Co., Ltd.* (1899), 16 T.L.R. 112; 9 Digest 287, 1781). As to the right of a shareholder to demand separate certificates on a division of his holding, see *Sharpe v. Tophams, Ltd.*, [1939] Ch. 373; [1939] 1 All E.R. 123, C.A.; Digest Supp. See also the First Schedule, Table A, Part I, article 8. A member is entitled to a "clean" certificate, i.e., one which does not contain on it any statement derogatory to his title (*Re Key (W.) & Son, Ltd.*, [1902] 1 Ch. 467; 9 Digest 287, 1782).

Allotment of shares.—See sections 47 to 52, *ante*.

Transfer of shares.—See sections 73 *et seq.* and the First Schedule, Table A, Part I, articles 22 to 28. As to refusal to register a transfer, see section 78, and Table A, Part I, articles 24 to 28. It will be noted that the company need not issue a certificate under this section in cases where it has power to refuse to register a transfer only where it has in fact exercised this power and refused to register the transfer. If the power exists but is not exercised, the company must issue the necessary certificate.

Enforcement of issue of certificate.—The application is by summons (R.S.C., Order 53B, r. 8 (i)). No appearance by the respondent is necessary (*ibid.*, r. 9).

Definitions.—"Default fine", "officer who is in default" (section 440); "company", "debenture", "officer", "share", "the Court" (section 455 (1)).

81. Certificate to be evidence of title.—A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

NOTES

The section reproduces section 68 of the 1929 Act.

Common seal.—See section 32. A share certificate is not a deed within the meaning of section 74 of the Law of Property Act, 1925 (15 Halsbury's Statutes 248), relating to the execution of deeds by or on behalf of corporations (*South London Greyhound Racecourses, Ltd. v. Wake*, [1931] 1 Ch. 496, at p. 503; Digest Supp.).

Certificate as evidence of title.—The certificate is evidence of the legal title, but not of the equitable title to the shares (*Shropshire Union Railways and Canal Co. v. R.* (1875), L.R. 7 H.L. 496, at p. 509; 9 Digest 380, 2412). It is the only documentary evidence of title in the shareholder's possession (*Société Générale de Paris v. Walker* (1885), 11 App. Cas. 20, at p. 29, H.L.; 9 Digest 364, 2325), and is not a negotiable instrument or a warranty of title by the company issuing it (*Longman v. Bath Electric Tramways, Ltd.*, [1905] 1 Ch. 646, C.A.; 9 Digest 287, 1778). The company is estopped from disputing the truth of any statement in a share certificate against any person who, without knowledge that the statement is untrue, has acted on the faith of it and has thereby suffered loss (*Balkis Consolidated Co. v. Tomkinson*, [1893] A.C. 396; 9 Digest 288, 1786).

Definitions.—"Member" (section 26); "company", "share" (section 455 (1)).

82. Evidence of grant of probate.—The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

NOTES

The section reproduces section 69 of the 1929 Act.

Grant of probate.—On the death of a shareholder domiciled abroad, the company can act only upon a grant of probate or administration in this country, and if a company registers the name of or a transfer by any person who has not obtained such a grant or pays dividends to any such person, it becomes an executor *de son tort* (*Fearnside and Dean's Case, Dobson's Case* (1866), 1 Ch. App. 231; 9 Digest 408, 2620). The person having the legal right to shares in consequence of the death of the member is entitled in the absence of any veto conferred on the company by the articles, to have his name entered on the register. (*Scott v. Scott (Frank F.) (London), Ltd.*, [1940] Ch. 794; [1940] 3 All E.R. 508, C.A.; 2nd Digest Supp.).

Definitions.—"Articles", "company", "document" (section 455 (1)).

83. Issue and effect of share warrants to bearer.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

NOTES

The section reproduces section 70 of the 1929 Act.

Share warrants.—These may be issued only in respect of fully paid up shares. As to whether this also applies to stock, see *Pilkington v. United Railways of Havana and Regla Warehouses, Ltd.*, [1930] 2 Ch. 108; Digest Supp. As to alterations to be made in the register, see section 112. As to particulars to be entered in the annual return, see the Sixth Schedule, Part I, paragraph 3. As to how far the bearer of a share warrant is deemed to be a member, see section 112 (5). Stamp duty is chargeable on a share warrant at the rate of £5 per cent. (Stamp Act, 1891, section 107, 115, Schedule 1; (16 Halsbury's Statutes 650, 653, 656); Finance Act, 1947 s. 52). A share warrant is a negotiable instrument (*Webb, Hale & Co. v. Alexandria Water Co., Ltd.* (1905), 93 L.T. 339; 9 Digest 600, 4005).

Definitions.—"Company limited by shares" (section 1 (2)); "articles", "company", "share" (section 455 (1)).

84. Penalty for personation of shareholder.—If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or

share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

NOTES

The section reproduces section 71 of the 1929 Act.

The section imposes a very heavy penalty for personation of a shareholder. Heavy penalties are also imposed by the Forgery Act, 1913, sections 2, 9 (4 Halsbury's Statutes 788, 794) for forgery (in England) of the documents here referred to and the possession of paper or implements for the commission of such a forgery. As to such offences in Scotland, see section 85.

The Court.—This obviously means the Court before whom the offender is convicted, and the definition in section 455 (1), would not be appropriate.

Definitions.—"Share warrant" (section 83); "company", "share" (section 455 (1)).

85. Offences in connection with share warrants in Scotland.—

(1) If in Scotland any person—

- (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or
- (b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered;

he shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

(2) If in Scotland any person without lawful authority or excuse, proof whereof shall lie on him,—

- (a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—
 - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or
 - (ii) a blank share warrant or coupon so issued or made; or
 - (iii) a part of such a share warrant or coupon; or
- (b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or
- (c) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

NOTES

The section reproduces section 72 of the 1929 Act.

The provisions of this section are replaced, as regards England, by the general provisions of the Forgery Act, 1913 (4 Halsbury's Statutes 787) (see the note to section 84, *ante*).

Definition.—"Share warrant" (section 83).

Special Provisions as to Debentures

86. Provisions as to registers of debenture holders.—(1) A company registered in England shall not keep in Scotland and a company registered in Scotland shall not keep in England any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.

(2) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Great Britain shall be kept in England, in the case of a company registered in England, or in Scotland, in the case of a company registered in Scotland, elsewhere than at the registered office of the company, any other office of the company at which the work of making it up is done, or, if the company arranges with some other person for the making up of the register or duplicate to be undertaken on behalf of the company by that other person, at the office of that other person at which the work is done, and where a company keeps in England or Scotland, as the case may be, both such a register and such a duplicate, it shall keep them at the same place.

(3) Every company which keeps any such register or duplicate in England or Scotland shall send notice to the registrar of companies of the place where the register or duplicate is kept and of any change in that place :

Provided that a company shall not be bound to send notice under this subsection where the register or duplicate has, at all times since it came into existence, or in the case of a company which came into existence after the commencement of this Act, at all times since then, been kept at the registered office of the company.

NOTES

The section incorporates certain provisions of section 74 (1) of the 1947 Act, which applied to a register of debenture holders the same provisions as apply to the register of members with respect to the place where such register is to be kept. That section came into force on July 1, 1948.

The effect of the section is that a company which keeps a register of debenture holders must keep it either at its registered office or at the place where it is made up, but the register must remain in the country in which the company is registered. Changes in the place in which the register is kept, if it is not kept at the registered office, must be notified to the Registrar. Where part of the register is kept in Great Britain and part outside, the part retained in this country is treated as the principal register and the provisions of this section apply. As to the register of members, see section 110. As to the dominion register, see generally sections 119 to 123. As to information in the annual return, see the Sixth Schedule, Part I, paragraph 2 (2).

Debentures.—The term is defined in section 455.

A debenture is a method of raising money, and the holder is therefore, a creditor of the company with certain rights as to repayment of principal and interest irrespective of whether profits are available or not (but see also section 89, which deals with perpetual debentures). Debentures may be of various kinds, for example, mortgage, registered, bearer, simple (i.e., without charge), or, perpetual. They may also be "stock" (i.e., provided they are fully paid). Debentures may be issued at, above or below par; but in the latter event, see section 95 (9), and it should also be noted that no conversion of debentures to shares can be made which would have the effect of avoiding the provisions of section 57 (which deals with the issue of shares at a discount). The payment of principal and interest on debentures is usually provided for by the terms of the issue, and in the event of a security being given, those terms are normally included in a Trust Deed. Redemption may be effected in several ways, for example, by a fixed date, purchase in open market, drawings, on demand, issue of further debentures to repay the old ones. As to the rights of debenture holders to inspect the register, see the next section, and as to their right to receive the balance sheet, etc., see section 158. For registration of charges, etc., see section 95, and as to appointment of a receiver, see sections 368, 369.

It should be noted that a company may not exercise any of its borrowing powers unless the conditions of section 109 are satisfied.

Registered office.—See section 107.

Register of debenture holders.—Before the 1947 Act, there was no clear obligation to keep a register of holders of debentures as distinct from a register of charges (see now section 104) in which the names of persons entitled to securities, other than bearer securities were entered. It would appear from the recommendation of the Cohen Report (paragraph 75), which section 74 of the 1947 Act was intended to implement, that it was the intention of that section to impose such an obligation. If that was the case, it does not appear to have been successful, since neither that section nor the present section says in terms that such a register *must* be kept, but merely makes provision in the case where one, in fact, is kept.

Definitions.—"Company", "debenture", "register of companies" (section 455 (1)); "commencement of this Act" (section 462 (2)).

87. Rights of inspection of register of debenture holders and to copies of register and trust deed.—(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of one shilling or such less sum as may be prescribed by the company.

(2) Any such registered holder of debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

NOTES

The section combines section 73 of the 1929 Act and section 74 (2) of the 1947 Act. The latter provision came into force on July 1, 1948.

The effect of the section is that any person now has the right to inspect and on payment to obtain copies of the register of debenture holders, but if he is not a shareholder or a debenture holder, he may inspect the register only on payment of a fee.

Right to inspect.—See *Lemon v. Austin Friars Investment Trust, Ltd.*, [1926] Ch. 1, C.A.; Digest Supp. The right to inspect does not carry the right to make copies (*Re Balaghât Gold Mining Co.*, [1901] 2 K.B. 665, C.A.; 9 Digest 209, 1298). This right is, by implication, excluded because copies may be obtained on payment (see subsection (2), *supra*).

Order to compel inspection.—The application is by summons (R.S.C., Order 53B, r. 8 (e)), and should be made against the company, and in a proper case against any officer alleged to be in default, who may be made to pay the costs. No appearance is necessary (*ibid.*, r. 9). The affidavit in support of the summons must state that the application was made at the proper time, and, if the application is not made by a member or debenture holder, must state that the proper sum was tendered. Where copies are demanded, an offer to pay the proper fee for the copies must be stated, and the order should provide for payment in the case of copies.

Definitions.—"Officer who is in default", "default fine" (section 440); "company", "debenture", "officer", "share", "the Court" (section 455 (1)).

88. Liability of trustees for debenture holders.—(1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against

liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) The foregoing subsection shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release ; or

(b) any provision enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose ; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) of this section shall not operate—

(a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under the next following subsection remains a trustee of the deed in question ; or

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by the last foregoing subsection, the benefit of that provision may be given either—

(a) to all trustees of the deed, present and future ; or

(b) to any named trustees or proposed trustees thereof ;

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

NOTES

The section reproduces section 75 of the 1947 Act. That section came into force on July 1, 1948.

The effect of the section is that a general provision in a trust deed exempting trustees for debenture holders from liability is void, but enabling clauses as distinct from indemnity clauses are permitted. An enabling clause in a trust deed is one which confers on the trustees a power to do acts as trustees ; if they act within the scope of a power lawfully so conferred, they commit no breach of any duty. A clause of indemnity is one which is to prevent liability for a breach of duty being brought home to a trustee. As to the protection afforded to trustees who act on advice, see *infra*, "Care and diligence required of a trustee". It will be noted that the section does not affect the rights of existing trustees, who retain whatever rights of indemnity they enjoyed before the Act. It simply prohibits a general exemption or indemnity in the future in regard to new appointments, with wide powers to the debenture holders to modify this general prohibition.

The section restricts the common practice, before 1948, whereby most deeds under which trustees for debenture holders were appointed contained clauses which absolved the trustee from liability for anything but his own wilful neglect or default (as to which, see *Re City Equitable Fire Insurance Co., Ltd.*, [1925] Ch. 407, C.A. ; Digest Supp.).

Subject to the following provisions of this section.—See subsections (2) to (4).

Trust deed for securing debentures.—See generally, 5 Halsbury's Laws (2nd Edn.), pp. 474 *et seq.* A trust deed is often executed by which property of the company is specifically mortgaged to trustees for the debenture holders further to secure the payment of the moneys owing on the debentures.

Indemnity clauses.—Not only is a direct provision in the trust deed void, but also a separate contract between the trustee and the debenture holders whereby he is exempted from such liability is also of no effect. Cf. a similar provision in section 205, with regard to officers of a company.

Care and diligence required of a trustee.—See generally, 33 Halsbury's Laws (2nd Edn.), pp. 215 *et seq.* A trustee is bound to execute the trust with fidelity and reasonable diligence (*Charitable Corporation v. Sutton* (1742), 2 Atk. 400; 10 Digest 1197, 8501) and ought to conduct its affairs in the same manner as an ordinary prudent man of business would conduct his own affairs, but beyond this he is not bound to adopt further precautions (*Bacon v. Bacon* (1800), 5 Ves. 331; 24 Digest 674, 6997; *Robinson v. Harkin*, [1896] 2 Ch. 415; 43 Digest 882, 3256). The degree of prudence which he actually uses in the management of his own affairs is not, however, a proper standard (*Rae v. Meek* (1889), 14 App. Cas. 558, at p. 569, H.L.; 43 Digest 857, 3040). In cases of doubt or difficulty, he may take legal advice on a point of law or the advice of an expert on any other matter (*Stott v. Milne* (1884), 25 Ch. D. 710, C.A.; 43 Digest 826, 2714). These provisions are here further limited in that the degree of care and diligence required must be considered in the light of any provision of the trust deed and any powers, authorities, or discretion thereby conferred on him. For example, he may be entitled to rely on opinions formed or information supplied by others.

Release in respect of past breaches.—If the effect of the release is to relieve the trustee for breaches which have already taken place, subsection (1), *supra*, does not affect such release. If it purports to relieve him from anticipatory breaches in the future, it is invalid, unless it comes within the other exemptions of the section.

Enabling provision.—See the note on "effect of section", *supra*. It should be noted (i) that the majority required is not a numerical majority of the debenture holders, but a majority in value; and (ii) the majority is that of the debenture holders who actually vote, either in person or by proxy. Those present and not voting will not be counted in computing the majority. As to proxies, see section 136. It will also be noted that such release may relieve the trustee from liability for specific breaches or it may be a general release in respect of all past acts or omissions when the trustee ceases to act as trustee, either through death or otherwise.

Subsection (3).—The section is not retrospective and any exemptions already conferred before the coming into force of the section remain valid.

Subsection (4).—The subsection extends to a new trustee in whole or in part the benefit of indemnity provisions already applied to existing trustees by subsection (3), *supra*. This may be done by a resolution passed by the same majority as required by subsection (2) (b), *supra*. It will be noted, however, that here, the majority required is not of the debenture holders present *and voting* but by a 75 per cent. majority in value *present* in person or by proxy at the meeting. The majority must, apparently, be computed by reference to all debenture holders present and not merely to those voting. The application to the Court is by summons, R.S.C. Order 53B, r. 8 (s), S.I. 1948 No. 1756.

Definitions.—"Debenture", "the Court" (section 455 (1)); "commencement of this Act" (section 462 (2)).

89. Perpetual debentures.—A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

NOTES

The section reproduces section 74 of the 1929 Act. The section provides for the issue of debentures or debenture stock which are either not repayable at all or "only on the happening of a contingency" (for example, on the company being wound up). With this exception, debentures are usually redeemable (i.e., liable to be paid off) within a specified time.

Mortgage debenture.—A mortgage may be a debenture and thus within this section (*Knightbridge Estates Trust, Ltd. v. Byrne*, [1940 A.C. 613; [1940] 2 All E.R. 401, 11.L.; 2nd Digest Supp.). The origin of this section was to remove doubt whether the equitable rule that a mortgage could not be rendered irredeemable applied to debentures of a company (cf. e.g., *Samuel v. Jarrah Timber and Wood Paving Corporation, Ltd.*, [1904] A.C. 323, 327; 10 Digest 782, 4892).

Redemption of debentures.—In the case of redeemable debentures (although it should be noted that a company can give notice to redeem even in the case of "irredeemable" debentures, which would be one of the contingencies contemplated by the section) the method of redemption is normally provided for by the terms of issue. Among the more usual methods are (i) sinking funds; (ii) purchase in open market; (iii) insurance redemption policy; (iv) appropriation of profits sufficient to cover the redemption. In the case of a purchase in open market, it is usual to

treat any profit arising therefrom as a capital profit, while the effect in the case of (iv) above is that the company is not deprived of working capital. As to disclosure in accounts, see the Eighth Schedule. As to the meaning of "redeemable" and "irredeemable", see *Re Stocks (Joseph) & Co., Ltd., Willey v. Stocks (Joseph) & Co., Ltd.* (1909), [1912] 2 Ch. 134, n., at p. 146, n.; 10 Digest 778, 4870.

Deed for securing debentures.—See note to section 88.

Conversion of redeemable into irredeemable debentures.—Under a power to sanction any "modification or compromise" of the rights of the debenture holders contained in the trust deed, redeemable debentures may be converted into irredeemable debentures (*Northern Assurance Co., Ltd. v. Farnham United Breweries, Ltd.*, [1912] 2 Ch. 125; 10 Digest 779, 4872; *Re Stocks (Joseph) & Co., Ltd., Willey v. Stocks (Joseph) & Co., Ltd.*, *supra*).

Definitions.—"Debenture" (section 455 (1)); "commencement of this Act" (section 462 (2)).

90. Power to re-issue redeemed debentures in certain cases.—

(1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled;

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Subject to the provisions of the next following section, on a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

NOTES

The section reproduces section 75 of the 1929 Act, except for subsection (3) of that section (as to which, see now the Eighth Schedule, Part I, paragraph 2 (d), *post*) and *ibid.*, subsection (6) (as to which, see section 91, *post*).

Re-issue of debentures.—The new debentures must contain the same terms as the originals with the same date for redemption (*Re Antofagasta (Chili) and Bolivia Rail. Co., Ltd.'s Trust Deed, Antofagasta (Chili) and Bolivia Rail. Co., Ltd. v. Schroder*, [1939] Ch. 732; [1939] 2 All E.R. 461; Digest Supp.). In practice it is not unusual for debenture holders to exercise their option to convert their holdings to a new issue when the company's right to redeem arises. In this case, the accounting treatment

will call for a transfer from the old debenture account to the new one, subject to such adjustments as may be necessary arising out of the new terms, and cash would not necessarily pass between the company and the debenture holders. If debentures which have been redeemed are subsequently re-issued, the old debentures will, of course, be liquidated by the payment of cash which entries will be reflected in the cash book. On the re-issue, the debenture account will be credited with the cash received and a corresponding entry will be made in the receipts cash book. As to accounts disclosure, see the Eighth Schedule. See also section 95 (registration of charges).

Subsection (1) (b) : by passing a resolution.—See generally, section 141.

Subsection (2).—This provision applies to debentures whenever issued (see section 91).

Subsection (3).—It would appear that where debentures have been redeemed and re-issued as collateral security for an advance this is a “re-issue” within the meaning of the section, although if the advance for which they are security is paid off, the debentures are not necessarily redeemed thereby. The liability, while the loan is outstanding, is *contingent*, and as such a note would have to appear on the balance sheet (see Eighth Schedule).

Stamp duty.—As to the stamp duty on debentures, see the Stamp Act, 1891, Schedule 1 (16 Halsbury's Statutes 656) Finance Act, 1947, s. 52, particularly (2) (a) (vii); and generally, 5 Halsbury's Laws (2nd Edn.), pp. 500 to 502.

Definitions.—“Articles”, “company”, “debentures” (section 455 (1)); “commencement of this Act” (section 462 (2)).

91. Saving, in case of re-issued debentures, of rights of certain mortgagees.—Whereas by section one hundred and four of the Companies (Consolidation) Act, 1908, it was provided that, upon the re-issue of redeemed debentures, the person entitled to the debentures should have the same rights and priorities as if the debentures had not previously been issued :

And whereas section forty-five of the Companies Act, 1928, amended the said section one hundred and four so as to provide (amongst other things) that the said person should have the same priorities as if the debentures had never been redeemed, but saved, in the case of debentures redeemed before, but re-issued after, the date of the commencement of that Act (that is to say, the first day of November, nineteen hundred and twenty-nine), the rights and priorities of persons under mortgages and charges created before that date :

Now, therefore, where any debentures which were redeemed before the said first day of November have been re-issued after that day and before the commencement of this Act, or are re-issued after the commencement of this Act, the re-issue of the debentures shall not prejudice and shall be deemed never to have prejudiced any right or priority which any person would have had under or by virtue of any such mortgage or charge as aforesaid if the said section one hundred and four, as originally enacted, had been enacted in this Act instead of the last foregoing section.

NOTES

The section corresponds with section 75 (6) of the 1929 Act. The section preserves priorities where debentures were redeemed before and re-issued after the 1st November, 1929, but not, it appears, where they were both redeemed and re-issued before that date.

Definitions.—“Debenture” (section 455 (1)); “commencement of the Act” (section 462 (2)).

92. Specific performance of contracts to subscribe for debentures.—A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

NOTES

The section reproduces section 76 of the 1929 Act. Before the corresponding enactment in the 1907 Act, such a contract was not specifically enforceable, but any damages which were the direct consequence of the breach of such a contract could be recovered (*Western Wagon and Property Co. v. West*, [1892] 1 Ch. 271; 8 Digest 430, 79). But where a person who had agreed to take debentures had paid for them, he was treated in equity as the holder (*Pegge v. Neath and District Tramways Co., Ltd.*, [1898] 1 Ch. 183; 10 Digest 764, 4785).

Debentures payable by instalments.—Where debentures have been issued payable by instalments and have been forfeited, the company cannot enforce payment (*Kuala Pahi Rubber Estates, Ltd. v. Mowbray* (1914), 111 L.T. 1072, C.A.; 10 Digest 763, 4774).

Charge on land.—No action can be brought on an agreement to purchase debentures or debenture stock containing a charge on land, unless the agreement or some memorandum thereof is in writing (*Driver v. Broad*, [1893] 1 Q.B. 744, C.A.; 10 Digest 771, 4826; Law of Property Act, 1925, section 40).

Definitions.—"Company", "debenture" (section 455 (1)).

93. Validity of debentures to bearer in Scotland.—It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms.

NOTES

The section reproduces section 77 of the 1929 Act. The section removes the last doubt as to the negotiability of bearer debentures. For a historical note on the subject, see the note to section 77 of the 1929 Act in Buckley on the Companies Acts (11th Edn.).

Bearer debentures.—Where such debentures are issued, interest coupons are attached and the principal and interest are payable upon presentation and delivery of the debenture and coupons. Bearer debentures are rarely issued, as the *ad valorem* duty payable thereon is larger than the duty upon registered debentures. A bearer debenture is a negotiable instrument (*Bechuanaland Exploration Co. v. London Trading Bank*, [1898] 2 Q.B. 658; 6 Digest 449, 2879), and is transferable by delivery so as to pass the property therein to a *bona fide* holder for value.

94. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.—(1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the said provisions, section three hundred and nineteen of this Act shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

(3) The periods of time mentioned in the said provisions of Part V of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(4) Where the date referred to in the last foregoing subsection occurred before the commencement of this Act, subsections (1) and (3) of this section shall have effect with the substitution, for references to the said provisions of Part V of this Act, of references to the provisions which, by virtue of subsection (9) of the said section three hundred and nineteen are deemed to remain in force in the case therein mentioned, and subsection (2) shall not apply.

(5) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

NOTES

The section combines section 78 of the 1929 Act (as expanded by subsequent enactments) and section 91 (8) of the 1947 Act, so far as that section applies to the

appointment of a receiver. The last-mentioned provision came into force on July 1, 1948.

The effect of the section is that the debts which are to be paid in priority on a winding up (as to which, see section 319) are also payable by a receiver appointed on behalf of the holders of debentures which are subject to a floating charge as preferential debts. The debts so payable and the enactments by virtue of which they are payable are set out in section 319 (1). The provisions of this section do not exclude the operation of section 319 (5) (b) (*Re Griffin Hotel Co., Ltd., Tetley (Joshua) & Son, Ltd. v. Griffin Hotel Co., Ltd.*, [1941] Ch. 129; [1940] 4 All E.R. 324; 2nd Digest Supp.). It will be noted that the section does not apply to a Scottish company.

Appointment of a receiver.—The section applies where the receiver appointed by the debenture holders takes possession although no appointment has been made by the Court (*Re Barnby's, Ltd., Fallows v. Barnby's, Ltd.*, [1899] W.N. 103; 10 Digest 793, 4981). For form of order appointing receiver, see Encyclopaedia of Court Forms, title Companies, Vol. 6, Forms Nos. 668 *et seq.*

Floating charge.—See section 322. Where the charge is partly specific and partly floating, the priority of the preferential payments applies only to assets secured by the floating charge (*Re Lewis Merthyr Consolidated Collieries, Ltd., Lloyds Bank v. The Co.*, [1929] 1 Ch. 498, C.A.; Digest Supp.). They do not obtain priority over all other payments, but rank immediately in front of payments to the debenture holders (*Re Glyncoffwg Colliery Co., Railway Debenture and General Trust Co. v. The Co.*, [1926] Ch. 951; Digest Supp.; where the assets were held applicable in the following order: (i) costs of realisation; (ii) costs including receiver's remuneration; (iii) costs, charges, and expenses of the debenture trust deed including the trustees' remuneration; (iv) plaintiff's costs of action; (v) preferential creditors; (vi) debenture holders. If the receiver exhausts the assets in carrying on the business of the company on behalf of the debenture holders without providing for preferential debts, he is liable in damages (*Woods v. Winskill*, [1913] 2 Ch. 303; 10 Digest 793, 4982), but if he has disregarded the priority through misrepresentation of the debenture holders' agent, the receiver being unaware of the illegality, he is entitled to enforce an indemnity given by the agent (*Westminster City Council, v. Treby*, [1936] 2 All E.R. 21; Digest Supp.).

Preferential payments in winding up.—See section 319.

Accrued holiday remuneration.—See section 319 (8). Subsection (2) does not apply where the receiver is appointed or takes possession before July 1, 1948 (see subsection (4), *supra*).

Existing appointments.—Where the receiver is appointed or takes possession before July 1, 1948, the preferential debts are those provided for under the 1929 Act and subsequent enactments prior to the 1947 Act (as to which, see section 319).

Definitions.—"Resolution for winding up" (section 278); "accrued holiday remuneration" (section 319 (8)); "company", "debenture" (section 455 (1)); "commencement of this Act" (section 462 (2)).

PART III

REGISTRATION OF CHARGES

Registration of Charges with Registrar of Companies

95. Registration of charges created by companies registered in England.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges:—

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

- (d) a charge on land, wherever situate, or any interest therein, but not including a charge for any rent or other periodical sum issuing out of land ;
- (e) a charge on book debts of the company ;
- (f) a floating charge on the undertaking or property of the company ;
- (g) a charge on calls made but not paid ;
- (h) a charge on a ship or any share in a ship ;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of this section, be sufficient if there are delivered to or received by the registrar, within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

- (a) the total amount secured by the whole series ; and
 - (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and
 - (c) a general description of the property charged ; and
 - (d) the names of the trustees, if any, for the debenture holders ;
- together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this subsection, be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

- (a) the expression “ charge ” includes mortgage ;
- (b) the expression “ the fixed date ” means in relation to the charges specified in paragraphs (a) to (f), both inclusive, of subsection (2) of this section, the first day of July, nineteen hundred and eight, and in relation to the charges specified in paragraphs (g) to (i), both inclusive, of the said subsection, the first day of November, nineteen hundred and twenty-nine.

NOTES

The section reproduces section 79 of the 1929 Act except for minor amendments effected by section 89 (1) and (2) of the 1947 Act in subsections (2) (d) and (3) of the 1929 Act. The provisions of the 1947 Act here mentioned came into force on July 1, 1948. The section provides for the registration of mortgages and charges affecting the property of a company, including such particulars as those required to be registered by the registrar under section 98. The effect of registration is that creditors and others dealing with the company may, by virtue of their right of inspection (as to which, see sections 98, 105), have notice of charges, etc., created by the company, including notice where the debt for which the charge was given has been partly paid or satisfied (see section 100).

Other related provisions.—Sections 97 (registration of charges on existing property); 98, 99 (duties of the registrar as to the keeping of the register, rights of inspection, endorsements); 100 (memorandum of satisfaction); 104 (company's duty to keep register).

Effect of changes.—Section 89 (1) of the 1947 Act provided that section 79 (2) (d) of the 1929 Act (corresponding with subsection (2) (d), *supra*), which required registration of any charge on land, wherever situate, or any interest thereon, was not to apply, and was to be deemed never to have applied to any rentcharge or a charge for any other periodical sum issuing out of land. It was also deemed never to have applied in the case of any corresponding provisions in the Acts of 1907 and 1908. Section 89 (2) of the 1947 Act provided that, in section 79 (3) of the 1929 Act (corresponding with subsection (3), *supra*), a copy, instead of the original, of the instrument of change, may be delivered for registration in the case of a change created abroad comprising any property situate abroad, and not only where it *solely* comprises such property, as was previously the case.

Subsection (1) : fixed date.—See subsection (10).

Unregistered charge void.—See *Re Monolithic Building Co., Tacon v. The Co.*, [1915] 1 Ch. 643, C.A. ; 10 Digest 770, 4818, where a director was given priority in respect of a registered mortgage debenture issued to him over an unregistered prior mortgage, of the existence of which he had full knowledge. The requirements of the section cannot be evaded by making what is in fact a mortgage or charge in form an absolute assignment (*Re Kent and Sussex Sawmills, Ltd.*, [1947] Ch. 177, 183 ; [1946] 2 All E.R. 638, 641 ; 2nd Digest Supp.).

Prescribed particulars.—As to the particulars prescribed, see Board of Trade Forms Nos. 47, 47A, 48 (S.R. & O. 1929 No. 823, Schedule, see Appendix V, post).

Subsection (2) : issue of debentures.—The power of a company to issue debentures is usually contained in the memorandum or articles. By Table A, Part I

article 79 (see the First Schedule), that power may be exercised by the directors. A trading company has implied power to borrow if it is incidental to the conduct of the business (*General Auction Estate and Monetary Co. v. Smith*, [1891] 3 Ch. 432; 10 Digest 731, 4572) and to create a charge on the assets (*Re Patent File Co., Ex parte Birmingham Banking Co.* (1870), 6 Ch. App. 85; 10 Digest 730, 4569), but *semble*, a non-trading company has no such power unless so reserved in the memorandum. See further as to debentures, section 86 and generally, 5 Halsbury's Laws (2nd Edn.), pp. 474 *et seq.*

Uncalled capital.—I.e., a charge on calls not yet made as a security, for instance, for moneys advanced to the company. A charge upon calls already made but not paid is also registrable under this section (*ibid.*, paragraph (g)). Uncalled capital may be encumbered only where power to do so exists in the memorandum or articles (see generally, 5 Halsbury's Laws (2nd Edn.), pp. 471–473).

Bill of sale.—The effect of these provisions is that every mortgage or charge within the meaning of the Bills of Sale Acts must be registered if a power is reserved under the terms of the charge, etc., for seizure or possession of the chattels. See generally, 3 Halsbury's Laws (2nd Edn.), pp. 4 to 18.

Charge on land.—Registration under these provisions of a charge on land for securing money created by a company has effect as if the charge had been registered as a land charge under the Land Charges Act, 1925 (16 Halsbury's Statutes 524) and is sufficient in place of registration under that Act (Land Charges Act, 1925, section 10 (5) (15 Halsbury's Statutes 536)). As to the effect on this provision of the 1947 Act, see note on "effect of changes", *supra*.

Book debts.—The term is not defined by the Act, but in *Dawson v. Isle*, [1906] 1 Ch. 633; 3 Digest 258, 771; they were defined as debts accruing in the ordinary course of trade and entered in the books (cf. money payable under a contract, irrevocable authority to pay to particular account, *Re Kent and Sussex Sawmills, Ltd.*, [1947] Ch. 177; [1946] 2 All E.R. 638; 2nd Digest Supp.). Bills receivable received in respect of trading debts have been defined as book debts (*Re Stevens, Stevens v. Kelly*, [1888] W.N. 110, at p. 116; 44 Digest 693, 5336), but they are excluded from these provisions by virtue of subsection (6) of this section.

Floating charge.—See section 322. A charge on a company's undertaking and property does not include its uncalled capital (*Re Handyside (Andrew) & Co., Ltd.* (1911), 131 L.T.Jo. 125; 10 Digest 745, 4660).

Charge on goodwill, etc.—Goodwill is an intangible asset which is represented by the company's capacity to earn profits, and in the case of a successful company is a valuable asset.

Subsection (3) : copy verified in the prescribed manner.—See S.R. & O. 1929 No. 823, r. 4 (Appendix V *post.*). As to the effect on subsection (3) of the 1947 Act, see note on "effect of changes", *supra*.

Subsection (5) : verified copy in Scotland or Northern Ireland.—See Board of Trade Form No. 47 C. (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post.*).

Subsection (8) : registration.—In the case of debentures the subsection requires not only the charge to be registered but also certain particulars thereof. This is for the protection of debenture holders. The series of debentures includes all those, wherever issued, which are entitled to the *pari passu* charge (*Re Yolland, Husson and Birkett, Ltd., Leicester v. Yolland, Husson and Birkett, Ltd.*, [1908] 1 Ch. 152, C.A.; 10 Digest 788, 4931). The registration of the particulars mentioned protects the debentures of the series issued not more than 21 days before registration and all other debentures of the series subsequently issued (*Re Harrogate Estates, Ltd.*, [1903] 1 Ch. 498; 10 Digest 788, 4937). It should be noted that the registrar's certificate under section 98, is conclusive that the requirements of this Act as to registration have been complied with.

Subsection (9) : debentures issued at a discount.—Debentures may be issued at a discount provided the power to borrow is left to the directors (see Table A, Part I, article 79), and provided they have the power also, on such terms as they think fit (*Re Anglo-Danubian Steam Navigation and Colliery Co.* (1875). L.R. 20 Eq. 339; 10 Digest 766, 4794). The effect of issuing debentures at a discount is to increase the rate of interest.

Definitions.—"Company", "debenture", "registrar of companies", "share" (section 455 (1)).

96. Duty of company to register charges created by company.

—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

NOTES

The section reproduces section 80 of the 1929 Act, except for an amendment effected by section 105 (1) and the Fifth Schedule to the 1947 Act, as regards the persons liable for default. The last-mentioned provision came into force on July 1, 1948.

Definitions.—"Default fine", "officer who is in default" (section 440) "company", "debenture", "officer", "registrar of companies" (section 455 (1))

97. Duty of company to register charges existing on property acquired.—(1) Where a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

NOTES

The section reproduces section 81 of the 1929 Act.

Prescribed particulars.—For the form, see Board of Trade Form No. 47B (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post.*).

Certified in the prescribed manner.—For the manner prescribed under the 1929 Act, see Companies (Forms) Order, 1929, paragraph 4 (see Appendix V, *post.*).

United Kingdom.—For the meaning of the expression, see note to section 14.

Definitions.—"Default fine", "officer who is in default" (section 440); "company", "officer", "registrar of companies" (section 455 (1)).

98. Register of charges to be kept by registrar of companies.—

(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter in the register with respect to such charges the following particulars:—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section ninety-five of this Act;

(b) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property ; and

(ii) the amount secured by the charge ; and

(iii) short particulars of the property charged ; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding one shilling for each inspection as may be specified by regulations made by the Board of Trade.

(4) The powers to make regulations conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

The section reproduces section 82 (1) to (3) of the 1929 Act. Subsection (4) is new.

Section 82 (4) of the 1929 Act was repealed by section 89 (4) of the 1947 Act, and the Registrar is no longer required to keep a chronological index of charges.

As to the duties of a company with respect to the register of mortgages, etc., see sections 103, 104. The effect of non-registration is that the charge is void as to the security, but the company is still liable to pay the debt (*Re Parkes Garage (Swadlincole), Ltd.*, [1929] 1 Ch. 139; Digest Supp.). See, however, section 101 which allows time for registration to be extended in certain circumstances).

Debentures.—See section 86.

Property acquired.—See section 97.

Open to inspection.—This includes the right to take copies (*Nelson v. Anglo-American Land Mortgage Agency Co.*, [1897] 1 Ch. 130, at p. 134; 10 Digest 788, 4929), but see section 426.

Statutory instrument.—See the Statutory Instruments Act, 1946, section 5 (39 Halsbury's Statutes 786). The Act came into force on January 1, 1948 (S.I. 1948 No. 3), and supersedes the Rules Publication Act, 1893 (18 Halsbury's Statutes 1016).

Definitions.—"Company", "registrar of companies" (section 455 (1)); "statutory instrument" (Statutory Instruments Act, 1946, section 1; 39 Halsbury's Statutes 783).

99. Endorsement of certificate of registration on debentures.—

(1) The company shall cause a copy of every certificate of registration given under the last foregoing section to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

NOTES

The section reproduces section 83 of the 1929 Act.

Definitions.—"Company", "debenture" (section 455 (1)).

100. Entries of satisfaction and release of property from charge.

—The registrar of companies, on evidence being given to his satisfaction with respect to any registered charge,—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part ; or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking ;

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

NOTES

The section combines section 84 of the 1929 Act and section 89 (3) of the 1947 Act. The last-mentioned provision came into force on July 1, 1948.

Effect of change.—Section 84 of the 1929 Act permitted the Registrar, on evidence being given to his satisfaction that the debt for which the registered charge was given had been paid or satisfied, to order that a memorandum of satisfaction be entered on the register and obliged him, if required, to furnish the company with a copy thereof. This is still the case, but it is now also provided that where part of the property or undertaking charged has been relieved from the charges or has ceased to form part of the company's property or undertaking, or where the debt for which the charge was given has been partly paid or satisfied, even though not wholly discharged, a memorandum of that fact must be entered on the register if the Registrar is given satisfactory evidence thereof. As to rectification of the register, see section 101.

Definitions.—" Company ", " registrar of companies " (section 455 (1)).

101. Rectification of register of charges.—The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

NOTES

The section reproduces section 85 of the 1929 Act.

Memorandum of satisfaction.—See section 100, *ante*. For an example of such an order before the 1929 Act, see *Re Light (C.) & Co., Ltd.* (1917), 61 Sol. Jo. 337; 10 Digest 788, 4934.

Accident or inadvertence.—An "accident" is a mishap or untoward event not expected or designed (*Fenton v. Thorley & Co., Ltd.*, [1903] A.C. 443; 34 Digest 266, 2264). "Inadvertence" includes ignorance of the provisions requiring registration (*Re Mendip Press, Ltd.* (1901), 18 T.L.R. 38; 10 Digest 790, 4953).

Other sufficient cause.—E.g., difficulties arising through the property charged being situate abroad (*Re Tingri Tea Co., Ltd.*, [1901] W.N. 165; 10 Digest 790, 4957), or (in the case of debentures) delay at the Stamp Office (*Re Bootle Cold Storage and Ice Co.*, [1901] W.N. 54; 10 Digest 790, 4958).

Application to the Court.—The application is by summons (R.S.C., Order 53B, r. 8 (n); S.I. 1948 No. 1756), and should be supported by an affidavit of the facts relied on as founding the jurisdiction of the Court to grant relief, and that no petition to wind up the company has been presented, no notice convening a meeting for voluntary liquidation has been served, and no judgment against the company has been recovered which is unsatisfied (see *Re Bootle Cold Storage and Ice Co.*, *supra*. See, however, so far as unsecured creditors are concerned, *Re M.I.G. Trust, Ltd.*, [1933] Ch. 542, C.A., at p. 571; Digest Supp.). The Court will not, as a rule, decide on motion the question whether a charge requires registration (*Cunard Steamship Co., Ltd. v. Hopwood*, [1908] 2 Ch. 564; 10 Digest 789, 4941). An order extending the time for registration

will not usually be made after the winding up of the company has commenced (*Re Abrahams (S.) & Sons*, [1902] 1 Ch. 695; 10 Digest 790, 4960). For forms on the application, see Encyclopaedia of Court Forms, title Companies, Vol. 6, Forms Nos. 107-109.

Definitions.—"Company", "the Court" (section 455 (1)).

102. Registration of enforcement of security.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The power conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Subsections (1) to (3) of this section reproduce subsections (1) to (3) of section 86 of the 1929 Act. Subsection (4) is new.

Notice of appointment of receiver.—For form of notice, see Board of Trade Form No. 53 (S.R. & O. 1929 No. 823, Schedule, See Appendix V, *post.*).

Prescribed fee.—Under the 1929 Act, this was 5s. (S.R. & O. 1929 No. 951, r. 1).

Register of charges.—See section 98.

Notice of receiver ceasing to act.—For form of notice, see Board of Trade Form No. 57A (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post.*).

Statutory instrument.—See the Statutory Instruments Act, 1946, sections 1, 5 (39 Halsbury's Statutes 784, 786).

Definitions.—"Company", "registrar of companies" (section 455 (1)); "statutory instrument" (Statutory Instruments Act, 1946, section 1; 39 Halsbury's Statutes 784).

Provision as to Company's Register of Charges and as to Copies of Instruments creating Charges

103. Copies of instruments creating charges to be kept by company.—Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

NOTES

The section reproduces section 87 of the 1929 Act.

Registered office.—See section 107.

Definitions.—"Charge" (section 95 (10)); "company", "debenture" (section 455 (1)).

104. Company's register of charges.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

NOTES

The section reproduces section 88 of the 1929 Act, except for a minor drafting amendment made by section 122 (4) and the Seventh Schedule to the 1947 Act in subsection (2) as to the persons liable under that subsection. The provisions of the 1947 Act here mentioned came into force on December 1, 1947. The effect of the section has not been altered.

Registered office.—See section 107.

Floating charge.—See section 322.

Undertaking and property of the company.—See note to section 95.

Charges required to be entered.—The charge, not the instrument, together with a short description of the property charged, etc., are what is required to be registered (Cf. *Smith's Case* (1879), 11 Ch.D. 579, C.A., at p. 585; 10 Digest 787, 4924). Copies of the instruments creating the charge are, however, open to inspection (see section 105).

Effect of omission to enter.—Apart from the liability imposed by subsection (2), *supra*, an omission to enter a charge in the register does not invalidate the charge (*Re General South American Co.* (1876), 2 Ch.D. 337, C.A.; 10 Digest 787, 4927).

Subsection (2).—In the corresponding provisions of the 1929 Act, the persons liable for authorising an omission were "any director, manager, or other officer". Section 122 (4) of the 1947 Act provided that the expression "officer" should include a director, manager or secretary and the present subsection is drafted accordingly. The company's bankers are not officers (*Re General Provident Assurance Co., Ex parte National Bank* (1872), L.R. 14 Eq. 507; 10 Digest 741, 6427), but the solicitor acting in the transaction is (*Re Patent Bread Machinery Co., Ex parte Valpy and Chaplin* (1872), 7 Ch. App. 289; 10 Digest 786, 4920). If the directors instruct the secretary to register a charge and he omits to do so, they are not knowingly and wilfully authorising or permitting the omission (*Re Hackney Borough Newspaper Co.* (1876), 3 Ch.D. 669; 10 Digest 787, 4922).

Definitions.—"Limited company" (section 1 (2)); "charge" (section 95 (10)); "company", "officer" (section 455 (1)).

105. Right to inspect copies of instruments creating mortgages and charges and company's register of charges.—(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the registrar of companies, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, every officer of the company who is in default shall be liable to a fine not exceeding five pounds and a further fine not exceeding two pounds for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in England, the court may by order compel an immediate inspection of the copies or register.

NOTES

The section reproduces section 89 of the 1929 Act, except for a minor amendment in subsection (2) as to the persons liable for default which was effected by section 105 (1) and the Fifth Schedule to the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

Right of inspection.—The right to inspect includes a right to take copies (*Nelson v. Anglo-American Land Mortgage Agency Co.*, [1897] 1 Ch. 130, at p. 134; 10 Digest 788, 4929; compare, however, cases cited in notes to section 113), and a shareholder is entitled to appoint a solicitor, accountant, or other competent person to inspect (*Bevan v. Webb*, [1901] 2 Ch. 59, at p. 75, C.A.; 36 Digest 456, 1208).

Court order to compel inspection.—The application is by summons under R.S.C. Order 53B, r. 8 (d). No appearance is necessary (*ibid.*, r. 9). The affidavit

in support must state that application was made at the proper time, and if the application is not made by a creditor or member, must state the tender of the proper sum. The power to order inspection under this section ceases when the company goes into liquidation (*Somerset v. Land Securities Co.*, [1897] W.N. 29; 10 Digest 788, 4930). For form of summons, see Ency. Court Forms, title Companies, Vol. 6, p. 232.

Definitions.—"Member" (section 26); "charge" (section 95 (10)); "officer who is in default" (section 440 (2)); "company", "officers", "registrar of companies", "the Court" (section 455 (1)).

*Application of Part III to Companies incorporated
outside England*

106. Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England.—The provisions of this Part of this Act shall extend to charges on property in England which are created, and to charges on property in England which is acquired, by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

NOTES

The section reproduces section 90 of the 1929 Act.

Definitions.—"Charge" (section 95 (10)); "company" (section 455 (1)).

PART IV

MANAGEMENT AND ADMINISTRATION

Registered Office and Name

107. Registered office of company.—(1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within fourteen days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section combines section 92 of the 1929 Act and section 56 of the 1947 Act. The latter section came into force on July 1, 1948.

Effect of change.—Under the corresponding provision of the 1929 Act, the periods under subsections (1) and (2) were 28 days in either case. The period under both subsections is now fourteen days.

Registered office.—By section 2, the memorandum must state whether the registered office is in England or Scotland. As the memorandum is unalterable in this respect (since it is not a condition which could lawfully have been contained in the articles (see section 23), and section 5 extends only to alteration of objects, not of place of registered office), any changes therein can take place only in the country in which the company has been registered. The registered office is also the place for service of documents on the company (see section 437 (1); cf. subsection (2) as to Scottish companies carrying on business in England). As to re-registration, see section 16. As to enforcement of duty to make returns, see section 428.

Notice of situation.—For form of notice, see Board of Trade Form No. 4 (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post.*).

Commencement of business.—As to restrictions, see section 108.

Date of incorporation.—See section 15.

Annual return.—See section 124.

Definitions.—"Default fine", "officer who is in default" (section 440); "annual return", "company", "officer", "registrar of companies" (section 455 (1)).

108. Publication of name by company.—(1) Every company—

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible ;
- (b) shall have its name engraven in legible characters on its seal ;
- (c) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1) of this section, the company shall be liable to a fine not exceeding fifty pounds.

(4) If an officer of a company or any person on its behalf—

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid ; or
- (b) issues or authorises the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in manner aforesaid ; or
- (c) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid ;

he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

NOTES

The section combines section 93 of the 1929 Act and section 57 of the 1947 Act, and incorporates a minor drafting amendment effected by section 122 (4) and the Seventh Schedule to the latter Act, as to the persons liable under subsection (4), *supra*. The latter provisions came into force on December 1, 1947, while section 57 of the 1947 Act came into force on July 1, 1948.

Effect of changes.—The name of the company need no longer be mentioned in advertisements, but must appear on business letters. A consequential amendment to the same effect is made in subsection (4) (b). As the expression “ officer ” is now defined to include a director, manager or secretary (see section 455 (1)), the reference to a director and manager which appeared in the corresponding provision of the 1929 Act is omitted from subsection (4) of this section.

Publication of name.—As to what is a sufficient publication, see *Stacey & Co., Ltd. v. Wallis* (1912), 106 L.T. 544 ; 1 Digest 648, 2677. A company under licence to dispense with the word “ limited ” in its name is exempted from those provisions (see section 19 (4)).

Bills and notes.—As to the power of a company to deal with bills or notes, see generally, 5 Halsbury's Laws (2nd Edn.), pp. 426 *et seq.*

Signature on behalf of the company.—See sections 32, 33.

Subsection (4) : holder.—In the case of orders for goods, the word “ holder ” means the person to whom the order was given (*Civil Service Co-operative Society, Ltd. v. Chapman* (1914), 30 T.L.R. 679 ; 9 Digest 627, 4151).

Registration of company under Registration of Business Names Act, 1916.—Where a company carries on business under a business name which does not consist of its corporate name without any addition, it must be registered under the Registration of Business Names Act, 1916 (19 Halsbury's Statutes 880) (1947 Act, section 58, *post*, which came into force on December 1, 1947, and still remains in force).

Definitions.—"Officer who is in default", "default fine" (section 440); "company", "officer" (section 455 (1)).

Restrictions on Commencement of Business

109. Restrictions on commencement of business.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange; and
- (d) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

- (a) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that paragraph (b) of this subsection has been complied with.

(3) The registrar of companies shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

- (a) a private company ; or
- (b) a company registered before the first day of January, nineteen hundred and one ; or
- (c) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

NOTES

The section combines section 94 of the 1929 Act and section 60 (5) of the 1947 Act. The latter provision came into force on July 1, 1948.

The effect of the section is that a company may not commence any business or exercise any borrowing powers until the requirements of this section have been complied with. It should be noted that the restriction applies to the commencement of any business and not merely of the business for which the company was formed.

Effect of change.—Subsection (1) (c) is new. Apart from the other conditions which must be fulfilled before a company issuing a prospectus to the public may commence business, no liability under section 51 may be outstanding.

Subsection (1) : Prospectus inviting the public to subscribe for shares.—See section 38.

Minimum subscription.—See section 47

Payment by directors for shares.—See *Alexander v. Automatic Telephone Co.* [1900] 2 Ch. 56, C.A. ; 9 Digest 291, 1808.

Statutory declarations in the prescribed forms.—For the prescribed forms, see Board of Trade Forms Nos. 44 and 44A (S.R. & O. 1929, No. 823, Schedule, see Appendix V, *post*).

Subsection (2) : Statement in lieu of prospectus.—See section 48.

Subsection (3) : Registrar's certificate.—The registrar's certificate is conclusive evidence that the company is entitled to commence business and evidence cannot be received to show that the facts did not warrant the issuing of the certificate (*Re Yolland, Husson and Birkett, Ltd., Leicester v. Yolland, Husson and Birkett, Ltd.*, [1908] 1 Ch. 152, C.A. ; 10 Digest 788, 4931).

Subsection (4) : Contracts made before company is entitled to commence business.—A bank which receives subscriptions on application for the company's shares is not entitled to a *quantum meruit* for services rendered before that date (*New Druce-Portland Co., Ltd. v. Blakiston* (1908), 24 T.L.R. 583 ; 9 Digest 637, 4208).

Subsection (7) : Company registered before January 1, 1901.—I.e., before the commencement of the Companies Act 1900. Before that Act, a company could commence business on incorporation. The restrictions imposed by that Act applied only to companies registered on or after January 1, 1901, which invited the public to subscribe for their shares.

Company registered before July 1, 1908, not issuing prospectus to the public.—I.e., before the application of the 1907 Act. That Act applied similar restrictions to companies which did not invite the public to subscribe for their shares unless they were private companies or had allotted any shares or debentures before July 1, 1908.

Definitions.—"Company having a share capital" (section 1 (2)) ; "private company" (section 28) ; "minimum subscription" (section 47) ; "company", "debenture", "director", "prescribed", "prospectus", "registrar of companies", "share", (section 455 (1)) .

Register of Members

110. Register of members.—(1) Every company shall keep a register of its members and enter therein the following particulars :—

- (a) the names and addresses of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(b) the date at which each person was entered in the register as a member ;

(c) the date at which any person ceased to be a member :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) The register of members shall be kept at the registered office of the company :

Provided that,—

(a) if the work of making it up is done at another office of the company, it may be kept at that other office ; and

(b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done ;

so, however, that it shall not be kept, in the case of a company registered in England, at a place outside England, and, in the case of a company registered in Scotland, at a place outside Scotland.

(3) Every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place :

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(4) Where a company makes default in complying with subsection (1) of this section or makes default for fourteen days in complying with the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section combines sections 95 and 98 (1) of the 1929 Act and sections 50 (1), (3), (4) and 51 of the 1947 Act. It also incorporates a minor amendment made by section 69 (2) of the 1947 Act. The last-mentioned provision came into force on December 1, 1947, while sections 50 and 51 of the 1947 Act came into force on July 1, 1948.

Effect of changes.—(1) *Form of register.*—The corresponding provision of the 1929 Act provided that the register be kept in one or more books. That provision is now omitted since by section 436 any register may be kept either by making entries in bound books or by recording the matters in question in any other manner. (2) *Occupation of members.*—This is now no longer required to be stated (section 51 of the 1947 Act). (3) *The distinguishing number of shares* need only be mentioned where the share has a number (see section 74, *ante*). This was provided for in section 69 (2) of the 1947 Act. (4) *Place where register kept.*—The register may now be kept at the place where it is made up, so long as it is in the country in which the company is registered. Notice of change in that place must be sent to the Registrar. (5) *Penalties or default.*—The default provisions of section 95 of the 1929 Act are extended to default in complying with the provision as to change of name.

Register as evidence.—A book or document, intended to be a register of the members, may be admitted in evidence as such, although the requirements as to how it should be kept have not been regularly complied with (*Re Printing Telegraph and Construction Co. of Agence Havas, Ex parte Cammell*, [1894] 2 Ch. 392, C.A.; 9 Digest 206, 1281). Rough memoranda or sheets of paper intended as materials from which a register might be prepared have been held not to be a register (*ibid.*). *Quaere*, however, whether such memoranda, etc., would comply with the requirements of section 436, *post*.

Share capital.—See section 61.

Conversion of shares into stock.—See sections 61, 62.

Registered office.—See section 107.

Date of entry in the register.—I.e., the actual date or date of transfer, but note the exception under section 117.

Improper entries.—The company must not enter in the register a statement that it has a lien on the shares of a member (*Re Key (W.) & Son, Ltd.*, [1902] 1 Ch. 467; 9 Digest 287, 1782), and it cannot insist on putting on the register anything except what is required by the Act to be inserted therein (*Re Saunders (T. H.) & Co., Ltd.*, [1908] 1 Ch. 415; 9 Digest 207, 1283).

Other related provisions.—Section 113 (inspection of register and index); section 114 (agent's liability in case of default); section 115 (power to close register); section 116 (power of court to rectify register). See also generally sections 119 to 123.

Method of entering up register of members.—The basis of entering up the register would be the allotment sheets, call records, share register, and transfer register and the authority would be the directors' minute.

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "company", "offices", "registrar of members", "share" (section 455 (1)); "commencement of this Act" (section 462 (2)).

111. Index of members.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section combines section 96 of the 1929 Act and section 50 (2), (4) of the 1947 Act. The latter provision came into force on July 1, 1948.

The section does not apply to a company which has less than 50 members.

Effect of change.—If an index is kept, it must be kept at the same place as the register of members, i.e., either at the registered office or the place where the register is made up (see section 110).

Form.—Neither the register nor the index need be kept in a bound book (see section 436).

Default in complying.—I.e., with the requirements as to the keeping of the index or failure to notify the Registrar where it is kept. See also section 114 *post* (agent's liability) and section 119, *post* (dominion register).

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "company", "officer" (section 455 (1)).

112. Provisions as to entries in register in relation to share warrants.—(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
- (c) the date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) of this section shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

NOTES

The section reproduces section 97 of the 1929 Act except for a minor amendment introduced by section 69 (2) of the 1947 Act. The latter provision came into force on December 1, 1947.

Effect of change.—The provisions of subsection (1) (b) have been modified so that the shares included in the warrant need only be specified by their numbers so long as they have numbers. This is consequential upon the provisions of section 74, whereby in certain circumstances shares need not be numbered.

Share warrant.—See section 83. The issue of share warrants by a private company is prohibited in view of the restrictions as to the transfer of shares (see section 28). The method of paying dividends on share warrants is by means of coupons attached thereto.

Distinguishing number.—See section 74.

Register of members.—See section 110.

Particulars required to be entered in the register of members.—See section 110 (1).

Bearer of share warrant as member.—As to the bearer of a share warrant, being a holder in regard to a director's share qualification, see section 182.

Definitions.—“ Member ” (section 26) ; “ share warrant ” (section 83) ; “ articles ”, “ company ”, “ share ” (section 455 (1)).

113. Inspection of register and index.—(1) Except when the register of members is closed under the provisions of this Act, the register, and index of the names, of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

NOTES

The section corresponds with section 98 of the 1929 Act.

Register of members.—See section 110. The register is deemed to include the dominion register (see section 120).

Index of names.—See section 111.

Right of inspection.—The object of giving non-members inspection is to enable them to ascertain what assets they may rely on (*Re Overend, Gurney & Co.* (1867), L.R. 2 H.L. 325, at p. 366 ; 9 Digest 32, 1). The inspection may be made by an

agent (*Re Joint-Stock Discount Co., Ltd., Ex parte Buchan* (1866), 36 L.J. Ch. 150; 9 Digest 209, 1295). The right of inspection does not include a right to take copies (*Re Balaghât Gold Mining Co.*, [1901] 2 K.B. 665, C.A.; 9 Digest 209, 1298). The right ceases when the company is being wound up (*Re Kent Coalfields Syndicate*, [1898] 1 Q.B., 754, C.A.; 9 Digest 209, 1299). Cf. somewhat similar provisions as to the register of debenture holders (section 87, *ante*).

Officer.—The penalties here set out for default are also extended to agents (see section 114).

Order to compel inspection.—The application is by originating summons under R.S.C. Order 53B, r.8 (a). The procedure is the same as on a similar application with regard to the register of debenture holders, as to which, see note to section 87. For form of application see Ency. Court Forms, title Companies, Vol. 6, Form No. 118, p. 228.

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "company", "officer", "the Court" (section 455 (1)).

114. Consequences of failure to comply with requirements as to register owing to agent's default.—Where, by virtue of proviso (b) to subsection (2) of section one hundred and ten of this Act, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, subsection (3) of section one hundred and eleven of this Act, or the last foregoing section or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of the last foregoing section shall extend to the making of orders against that other person and his officers and servants.

NOTES

The section corresponds with section 50 (5) of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that where a company has delegated the work of registration to an agent, he and his officers and servants will be liable to the same penalties for default as if he were an officer of the company and the same orders compelling inspection, etc., may be made against him.

Definitions.—"Officer who is in default" (section 440 (2)); "company", "officer" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

115. Power to close register.—A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

NOTES

The section reproduces section 99 of the 1929 Act.

The closing of the register of members is preparatory to the proposed annual general meeting of the company, and usually remains closed until after that meeting. The effect is that transfers will not be registered during that period, and the membership of the company is, therefore, static for that limited time. The closing of the register facilitates the work of the dispatch of notices to members as to the annual general meeting, and in practice it is usual for the closing of the register to be coincidental with the sending of notices. Under Table A, Part I, article 28, the directors have power to suspend the registration of transfers for a period not exceeding 30 days in any year (see the First Schedule, Table A).

Form of Application to Court.—See Ency. Court Forms, title Companies, Vol. 6, Form No. 105, p. 219.

Registered office.—See section 107.

Definitions.—"Member" (section 26); "company" (section 455 (1)).

116. Power of court to rectify register.—(1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member:

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the registrar.

NOTES

The section reproduces section 100 of the 1929 Act.

Register of Members.—See section 110.

Damages.—The company can only be ordered to pay damages when the register is ordered to be rectified (*Re Ottos Kopje Diamond Mines, Ltd.*, [1893] 1 Ch. 618, C.A. : 9 Digest 382, 2423). If money has been paid on the shares, the amount will be ordered to be returned with interest (*Karberg's Case*, [1892] 3 Ch. 1, C.A. : 9 Digest 115, 560) and the amount with costs is provable in a winding up (*Re British Gold Fields of West Africa*, [1899] 2 Ch. 7, C.A. : 10 Digest 934, 6409).

Jurisdiction of the Court.—The jurisdiction is discretionary (*Re Diamond Rock Boring Co., Ltd., Ex parte Shaw* (1877), 2 Q.B.D. 463, C.A. : 9 Digest 212, 1318) and is not limited to the cases here set out. For example, the Court will rectify the register to enable the members of a company to have a fair and reasonable exercise of their rights (*Burns v. Siemens Brothers Dynamo Works*, [1919] 1 Ch. 225 : 9 Digest 212, 1320). The jurisdiction of the Court is not limited to cases where a name has been entered improperly, but extends to cases where a name stands on the register for insufficient cause (*Re Imperial Chemical Industries, Ltd.*, [1936] 2 All E.R. 463). For other cases where the jurisdiction has been exercised, see 5 Halsbury's Laws (2nd Edn.) p. 233. When the Court entertains the application it must go into all the circumstances of the case and must consider what equity the applicant has to call for its intervention (*Trevor v. Whitworth* (1887), 12 App. Cas. 409, at p. 440, H.L.; 9 Digest 98, 411).

Application to the Court.—The application must be made promptly (*Sewell's Case* (1868), 3 Ch. App. 131, at p. 138 : 9 Digest 147, 831). The application is by motion or summons (R.S.C., Order 53B, r. 6) or it may be by action commenced by writ. The usual practice is by motion (*Duffin v. Mexican Gold and Silver Ore Reduction Co.*, [1890] W.N. 116 : 9 Digest 220, 1390), and the notice of motion must be served on the company (*Re Denver United Breweries, Ltd.* (1890), 63 L.T. 96 : 9 Digest 676, 4508). If the Court thinks that the case could be more satisfactorily dealt with by action, an order will not be made on motion (*Re National and Provincial Marine Insurance Co., Ex parte Parker* (1867), 2 Ch. App. 685 : 9 Digest 214, 1336). But an action may be instituted without any direction by the Court (*Bloxam v. Metropolitan Cab and Carriage Co. Ltd.* (1864), 4 New Rep. 51 : 9 Digest 387, 2447). But rectification will not be ordered on an interlocutory application in an action (*Siemens Brothers & Co. v. Burns*, [1918] 2 Ch. 324, C.A. at p. 338 : 9 Digest 415, 2680), or in the absence of third parties whose rights will be affected by the rectification (*Re Greater Britain Insurance Corporation, Ltd., Ex parte Brockdorff* (1920), 124 L.T. 194, C.A. : 9 Digest 183, 1164). No appearance by the respondent to a summons is necessary (R.S.C., Order 53B, r. 9). When the application is by the company to remove a number of names, it may be made *ex parte* (*Re London Electrobus Co., Ltd.* (1906), 22 T.L.R. 677 : 9 Digest 220, 1393). The Court may direct an issue to be tried (R.S.C., Order 33). Application can be made by leave after the commencement of a winding up, but a strong case must be made out (*Re Onward Building Society*, [1891] 2 Q.B. 463 : 9 Digest 213, 1331). As to rectification after winding up, see section 257.

Company required to send list of members to Registrar.—I.e., any company having a share capital (see section 124.)

Alteration of register.—Where the Court orders the register to be rectified by removing a name, the name should not be erased, but a line should be drawn through it and an abstract of the order signed by the secretary should be added (*Re Iron Ship Building Co.* (1865), 34 Beav. 597 : 9 Digest 210, 1309).

Failure to rectify.—If the company does not rectify the register pursuant to an order of the Court, or if, by resignation or otherwise, there is no officer left to obey the

order of the Court, the Court may direct rectification to be made by the applicant or by some other person appointed for the purpose (R.S.C., Order 42, r. 30).

Definitions.—"Member" (section 26); "company", "registrar of companies", "the Court" (section 455 (1)).

117. Trusts not to be entered on register in England.—No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England.

NOTES

The section reproduces section 101 of the 1929 Act. The section does not apply to Scotland, where the practice is to notice trusts in the transfer and registration of stocks for the purpose of marking the stock as the property of a particular trust (*Muir v. City of Glasgow Bank* (1879), 4 App. Cas. 337, at p. 360, H.L.; 9 Digest 200, 1242.)

Public trustee.—The entry of the public trustee in the books of a company does not constitute notice of a trust (Public Trustee Act, 1906, section 11; 20 Halsbury's Statutes 87).

Trustee as member.—A member who is, to the knowledge of the company, a trustee of shares registered in his own name is, nevertheless, liable for calls and other obligations of membership (*Chapman and Barker's Case* (1867), L.R. 3 Eq. 361; 9 Digest 201, 1246), but is entitled to an indemnity against the beneficiaries (*Hardoon v. Beluios*, [1901] A.C. 118, P.C.; 9 Digest 204, 1265), which is not, however, enforceable unless the liability has been or is about to be enforced against him (*Hughes-Hallett v. Indian Mammoth Gold Mines Co.* (1882), 22 Ch. D. 561; 9 Digest 204, 1268). The right of indemnity may be assigned to the liquidator of the company and enforced by him (*Hemming v. Maddick* (1872), 7 Ch. App. 395; 9 Digest 205, 1272). A director who is bound to hold his qualification shares (see section 182, *post*) "in his own right" is properly qualified if he holds in his name shares of which he is trustee (*Pulbrook v. Richmond Consolidated Mining Co.* (1878), 9 Ch. D. 610; 9 Digest 446, 2889).

Notice of equitable interests.—Where the articles expressly provide that the company is entitled to treat a shareholder as the absolute owner of his registered shares and is not bound to recognise any equitable interest, the company is not bound to accept or prescribe notices of equitable interests and such notices do not affect the company with any trusts (*Société Générale de Paris v. Walker* (1885) 11 App. Cas. 20, at p. 30, H.L.; 9 Digest 364, 2325). But where the company claims to have a lien or charge on the shares for its own benefit (see e.g., the First Schedule, Table A, Part I, article 11), the company may be affected with notice of the interests of third parties (*Rearden v. Provincial Bank of Ireland*, [1896] 1 I.R. 532; 9 Digest 206, 1). Notice to the company does not give any priority as between two persons claiming title to shares registered in the name of a third (*Roots v. Williamson* (1888), 38 Ch. D. 485; 9 Digest 417, 2699).

Distringas and charging orders.—If a notice in lieu of *distringas* (see R.S.C. Order 46, rr. 3-11) is served on a company in respect of any shares, the company may not permit those shares to be dealt with by the registered holder without proper notice to the claimant (*Société Générale de Paris v. Tramways Union Co.* (1884), 14 Q.B.D. 424, at p. 453, C.A.; 9 Digest 645, 4264). A charging order cannot be made on shares held by a trustee for a debt due from him personally, since they are not held by the judgment debtor "in his own right" within the meaning of section 14 of the Judgments Act, 1838 (10 Halsbury's Statutes 20) (*Cooper v. Griffin*, [1892] 1 Q.B. 740, C.A.; 9 Digest 205, 1276).

Definitions.—"Company", "registrar" (section 455 (1)). "England" includes Wales (Wales and Berwick Act, 1746, section 3, 18 Halsbury's Statutes 969).

118. Register to be evidence.—The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

NOTES

The section reproduces section 102 of the 1929 Act.

Register of members.—See section 110.

The register is *prima facie* evidence only and not conclusive evidence. Evidence may, therefore, be adduced to prove entries in the register to be untrue (*Re Briton Medical and General Life Association* (1888), 39 Ch. D. 61, at p. 71; 9 Digest 208, 1293).

Register as evidence in winding up.—See section 340.

Inaccurate register.—Inaccuracies or omissions do not necessarily prevent the register from being evidence (*Wills v. Murray* (1850), 4 Exch. 843; 9 Digest 404, 2591).

Matters directed or authorised to be inserted in register.—See sections 110, 116.

Definition.—"Member" (section 26).

Dominion Register

119. Power for company to keep dominion register.—(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members resident in that part (in this Act called a "dominion register").

(2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) References to a colonial register occurring in any articles registered before the first day of November, nineteen hundred and twenty-nine, shall be construed as references to a dominion register.

NOTES

The section reproduces section 103 of the 1929 Act.

Register of members.—See section 110. The provisions as to the keeping of a dominion register are in the discretion of the company (see section 120 (6)).

Notice to registrar.—For the form, see Board of Trade Form No. 29 (S.R. & O. 1929, No. 823, Schedule, see Appendix V, *post.*)

Colonial register.—The corresponding provision of the 1908 Act called this register the Colonial Register (1908 Act, section 34 (1)).

Definitions.—"Company having a share capital" (section 1 (2)); "member" (section 26); "default fine", "officer who is in default" (section 440); "company", "officer", "registrar of companies", "share" (section 455 (1)).

120. Regulations as to dominion register.—(1) A dominion register shall be deemed to be part of the company's register of members (in this section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall—

- (a) transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made; and
- (b) cause to be kept at the place where the company's principal register is kept a duplicate of its dominion register duly entered up from time to time.

Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine ; and where, by virtue of proviso (b) to subsection (2) of section one hundred and ten of this Act, the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with paragraph (b) of subsection (3) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.

NOTES

The section combines section 104 of the 1929 Act and section 50 (2) (4) (5) of the 1947 Act, so far as the latter provisions apply to the dominion register. The last-mentioned provisions came into force on July 1, 1948.

Effect of changes.—See notes below under “ duplicate dominion register ”.

Manner in which the principal register is required to be kept.—See section 110.

Advertisement before closing register.—See section 115.

Jurisdiction to rectify register.—See section 116.

Jurisdiction of dominion courts.—The Statute of Westminster, 1931, section 4 (24 Halsbury's Statutes 131) provides that Acts of Parliament of the United Kingdom are not to extend to dominions as part of their law except by consent. This provision, however, applies only to Acts passed after the commencement of the Statute. As the present provision was originally enacted in the 1929 Act, it is not affected by the Statute of Westminster.

Duplicate dominion register.—The corresponding provision of the 1929 Act required the duplicate dominion register to be kept at the company's registered office. In view of the fact that the principal register may now be kept at the place where it is made up (see section 110 (2)), provision is now made in subsection 3 (b), *supra*, for the duplicate register to be kept at the same place. The default provisions of subsection (7), *supra*, are, in consequence, applied to agents to whom the making up of the register is entrusted.

Registered office.—See section 107.

Definitions.—“ Member ” (section 26) ; “ dominion register ” (section 119) ; “ default fine ”, “ officer who is in default ” (section 440) ; “ articles ”, “ company ”, “ officer ”, “ share ”, “ the Court ” (section 455 (1)) ; “ person ” (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001).

121. Stamp duties in case of shares registered in dominion registers.—An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

NOTES

The section reproduces section 105 of the 1929 Act.

Instrument of transfer.—See section 75.

Definitions.—“ Dominion register ” (section 119 (1)) ; “ share ” (section 455 (1)).

122. Power to extend provisions as to dominion registers to other countries.—(1) The Foreign Jurisdiction Act, 1890, shall have effect as if the last three foregoing sections were included among the enactments which by virtue of section five of that Act may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.

(2) His Majesty may by Order in Council direct that the said sections, including any enactments for the time being in force amending or substituted for those sections, shall extend, with or without any exceptions, adaptations or modifications specified in the Order, to any territories under His Majesty's protection to which those sections cannot be extended under the Foreign Jurisdiction Act, 1890, as amended by subsection (1) of this section.

His Majesty may by Order in Council revoke or vary any Order made under this subsection.

NOTES

The section reproduces section 106 of the 1929 Act.

Foreign jurisdiction Act, 1890.—Section 5 of that Act provided for the application of certain enactments in foreign countries in which for the time being British jurisdiction is exercised. By section 1 of the Foreign Jurisdiction Act, 1913, that provision was amended to include among those enactments the Companies (Consolidation) Act, 1908, sections 34 to 36 (now sections 119 to 121 of this Act). This provision was replaced by section 106 of the 1929 Act and is now replaced by the present section. See generally section 459, *post*.

Order in Council.—Forthwith upon any such order being made, the provisions operate to the extent of the jurisdiction of the Crown as if that country were a British possession and as if the Crown in Council were the legislature of that possession (Foreign Jurisdiction Act, 1890, section 5 (2) ; 5 Halsbury's Statutes 798).

123. Provisions as to branch registers of dominion companies kept in the United Kingdom.—(1) If by virtue of the law in force in any part of His Majesty's dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that subsection (2) of section one hundred and ten (except the proviso thereto) and sections one hundred and thirteen and one hundred and sixteen of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they apply to and in relation to the registers of companies within the meaning of this Act.

(2) For the purposes of this section, the expression " His Majesty's dominions " includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.

(3) For the purposes of the Mandated and Trust Territories Act, 1947 (which makes provision as to the application and modification of enactments in relation to such mandates as aforesaid and the trusteeship system of the United Nations), subsections (1) and (2) of this section shall be deemed to be contained in an Act of an earlier session than that Act.

NOTES

Subsections (1) and (2) of the section reproduce section 107 of the 1929 Act. Subsection (3) is new and its addition is self-explanatory.

The section makes provision for branch registers of dominion companies to be kept in this country.

Annual Return

124. Annual return to be made by company having a share capital.—(1) Every company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Sixth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near thereto as circumstances admit :

Provided that—

- (a) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year ;
 - (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Part I of the said Sixth Schedule must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph ;
 - (c) the return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member ; and
 - (d) the annual return of a company made next after the expiry of paragraph (1) of regulation three of the Defence (Companies) Regulations, 1940 (under which the annual return of a company having a share capital need not contain any list of members, except in the case of a company's first annual return or of a private company), need not, if that paragraph applied to the annual return last made by the company, give the particulars required by the said paragraph 5 as to past members of the company or as to shares transferred.
- (2) In the case of a company keeping a dominion register—
- (a) references in proviso (c) to the foregoing subsection to the particulars required by the said paragraph 5 shall be taken as not including any such particulars contained in the dominion register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made ; and
 - (b) where an annual return is made between the date when any entries are made in the dominion register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section and of Part I of the Sixth Schedule to this Act the expressions " director " and " officer " shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

NOTES

The section combines sections 108 and 110 (4) and (5) of the 1929 Act and sections 52 (1) and (2) and 53 (3) to (6) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948. The effect of the section is that companies having a share capital must make an annual return in the form set out in Part II of the Sixth Schedule, with modifications in the circumstances set out in the proviso to subsection (1) and in

subsection (2). The contents of the annual return are set out in Part I of the Sixth Schedule, and in general correspond with the matters specified in section 108 (3) of the 1929 Act, with modifications introduced by the 1947 Act.

Effect of changes.—(1) It is unnecessary for a return to be made in the year in which a company was incorporated, and, in any event, a company need not make its annual return until after its first annual general meeting, which must be held within eighteen months of incorporation (see section 131). (2) Instead of filing a complete return of members every year, a company need only do so every third year, and in the intervening two years it may file instead a list of changes in the membership since the last return. (3) Public companies which were absolved during the war years from making returns of their shareholders will not be under an obligation to file with the list of shareholders a list of those persons who have ceased to be members since the year when they last made a return of members. (4) Particulars of entries made in a dominion register which could not be included in an annual return because they were received in the company's registered office after the return in question was made must be included in the next or a subsequent annual return filed with the Registrar. (5) The occupations of past and present members need not be stated (1947 Act, section 53 (6)), and the references thereto in the corresponding section of the 1929 Act have been omitted.

Annual return by company not having a share capital.—See section 125.

Annual return of private company.—See section 128.

Time for completion of annual return.—See section 126.

Documents to be annexed to annual return.—See section 127.

Registered office.—See section 107.

Register of members.—See section 110.

Register of debenture holders.—See section 86.

Once at least in every year.—"Year" means the period from January 1 to December 31 (*Gibson v. Barton* (1875), L.R. 10 Q.B. 329; 9 Digest 585, 3917.)

Conversion of shares into stock.—See section 61.

Enforcement of duty to make returns.—See section 428. The offence is a continuing offence (*R. v. Catholic Life and Fire Assurance and Annuity Institution, Ltd.* (1883), 48 L.T. 675; 9 Digest 586, 3923).

Dominion register.—See sections 119–121.

Definitions.—"Company having a share capital" (section 1 (2)); "member" (section 26); "private company" (section 28); "dominion register" (section 119 (1)); "annual general meeting" (section 131); "default fine", "officer who is in default" (section 440); "company", "debenture", "director", "officer", "registrar of companies", "share" (section 455 (1)); "person in accordance with whose directions or instructions the directors of the company are accustomed to act" (section 455 (2)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

125. Annual return to be made by company not having a share capital.—(1) Every company not having a share capital shall once at least in every calendar year make a return stating—

- (a) the address of the registered office of the company;
- (b) in a case in which the register of members is, under the provisions of this Act, kept elsewhere than at that office, the address of the place where it is kept;
- (c) in a case in which any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept;
- (d) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company:

Provided that a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

NOTES

The section combines sections 109 and 110 (4) (5) of the 1929 Act and sections 27 (1), 52 (1), 53 (1), and 74 (1) of the 1947 Act. The latter provisions came into force on July 1, 1948.

The section provides for the annual return in the case of a company not having a share capital. Certain modifications have been made in these provisions, as in the case of those in section 124, *ante*, by the 1947 Act.

Effect of changes.—(1) Where the register of members and the register of debenture holders are kept elsewhere than at the registered office (see sections 86 (2) and 110 (2)) the address of the place where it is kept must be given in the annual return. (2) The register of directors is now renamed the register of directors and secretaries (see section 200 (1)), and a reference to particulars of the secretary has, in consequence, been added in subsection (1) (d). (3) As in the case of a company having a share capital, a return need not be made in the year of incorporation, or in the following year, if, in that year, the company is not required, under section 131 to hold an annual general meeting. (4) The default clauses of section 110 of the 1929 Act (in that Act contained in that section but referred back to the corresponding provision in that Act of the present section) are now expressly included.

Form of return.—For form, see Board of Trade Form No. 7 (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post*).

Registered office.—See section 107.

Register of members.—See section 110.

Register of debenture holders.—See section 86.

Register of directors and secretaries.—See section 200. As to directors and secretaries, see generally, section 176, 177.

Mortgages and charges required to be registered.—See section 95.

Enforcement of duty to make returns.—See section 428 and note to section 124.

Definitions.—"Company not having a share capital" (section 1 (2)); "member" (section 26); "default fine", "officer who is in default" (section 440); "annual return", "company", "debenture", "director", "registrar of companies", "share" (section 455 (1)); "person in accordance with whose directions or instructions the directors are accustomed to act" (section 455 (2)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

126. Time for completion of annual return.—(1) The annual return must be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

For the purposes of this subsection the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

NOTES

The section combines section 110 (1), (4), (5) of the 1929 Act and sections 52 (2), (3), 55 (1) of the 1947 Act. The latter sections came into force on July 1, 1948. For the corresponding provision of section 110 (3) of the 1929 Act, see section 127, *post*.

Effect of changes.—(1) The annual return must be completed within 42 days after the annual general meeting (instead of 28 days after the first or only general meeting, as under the 1929 Act), whether or not the annual general meeting is the first or only general meeting in that year. (2) The return must be signed *both* by a director and the secretary (instead of, as under the 1929 Act, being signed *either* by a director *or* the manager *or* the secretary). (3) The annual return need not be contained in a separate part of the register of members (1947 Act, section 52 (3)), and that provision of section 110 (1) of the 1929 Act is not here reproduced. (4) The provisions of section 98 of the 1929 Act (now section 113, *ante*), which were, in that Act, applied to the annual return by section 110 (2), no longer so apply (see 1947 Act, section 52 (3)), and *ibid.*, section 110 (2) is not therefore reproduced in this section. Subsection (2) re-enacts in substance the provisions of section 110 (4), (5), of the 1929 Act, limiting them, however, to this section only. Separate provision in case of default is now made in both sections 124 and 125, *ante*.

Annual return.—See section 124.

Annual general meeting.—See section 131.

Director and secretary.—See sections 176, 177.

Definitions.—“Default fine”, “officer who is in default” (section 440); “company”, “director”, “officer”, (section 455 (1)); “person in accordance with whose directions or instructions the directors are accustomed to act” (section 455 (2)); “person” (Interpretation Act, 1889, section 19; 18 Halsbury’s Statutes 1001).

127. Documents to be annexed to annual return.—(1) Subject to the provisions of this Act, there shall be annexed to the annual return—

- (a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and
- (b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet;

and where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation.

(2) If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

For the purposes of this subsection, the expression “officer” shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(4) This section shall not apply to an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909.

NOTES

The section combines section 110 (3) of the 1929 Act and sections 53 (2), 55 (1) of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—The main effect of the changes here introduced is that the annual return must include a certified true copy of every audited balance sheet laid before the company in general meeting during the period to which the return relates (and not only of the last balance sheet, as previously required), including every document (similarly certified) required by law to be annexed thereto, together with the auditor’s report thereon. A copy of the director’s report (certified in the same

way) must also be included, and certified translations must be given of all such documents which are in a foreign language and not only of the balance sheet, as hitherto.

These new provisions are designed presumably to meet the situation created by section 124 (1) (a).

A private company is no longer exempt from the requirements unless it is an exempt private company (as to which, see section 129, *post*). The certificates required to be given are to be by *both* a director *and* the secretary, and not, as in the 1929 Act, by *either* a director *or* the manager *or* the secretary.

Balance sheet laid before company in general meeting.—As to balance sheet, see generally, sections 149 to 151, and the Eighth Schedule, and as to general meeting, see section 131.

Document required by law to be annexed.—See generally, section 149.

Report of the auditors.—See section 156.

Report of the directors.—See section 157.

Certified translation in the prescribed manner.—For the form prescribed see the Companies (Forms) Order, 1929 (S.R. & O. 1929 No. 823), r. 5, in Appendix V, *post*.)

Subsection (2).—This subsection makes provision for dealing with the transitional period in the case of a company which had already passed a balance sheet according to the requirements of the 1929 Act.

Assurance Companies Act, 1909, section 7 (4).—That subsection provides that if a company subject to the Act deposits its accounts and balance sheets in accordance with that section, it is not obliged to comply with section 26 (3) of the 1908 Act (now replaced by this section). As to the effect on that Act of the present Act, see also the Sixteenth Schedule, paragraph 1, *post*.

Definitions.—"Default fine", "officer who is in default" (section 440); "annual return", "company", "director", "document", "officer", "prescribed" (section 455 (1)); "person in accordance with whose directions or instructions the directors are accustomed to act" (section 455 (2)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

128. Certificates to be sent by private company with annual return.—A private company shall send with the annual return required by section one hundred and twenty-four of this Act a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section twenty-eight of this Act are not to be included in reckoning the number of fifty.

NOTES

The section reproduces section 111 of the 1929 Act as amended by section 55 (1) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of change.—Section 111 of the 1929 Act required the certificate here mentioned to be signed *either* by a director *or* by the manager *or* by the secretary. The certificate must now be signed *both* by a director and the secretary.

Private company.—The matters required to be certified are among the principal requirements for a company to rank as a private company (see section 28).

Director, secretary.—See section 176, 177.

Date of incorporation.—See section 13.

Issued any invitation to the public.—See generally, section 38.

Definitions.—"Member" (section 26); "private company" (section 28); "annual return", "company", "debenture", "director", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

129. Exemption, in certain cases, of private companies, from requirements of s. 127.—(1) A private company shall be excepted from the requirements imposed by section one hundred and twenty-seven of this Act if, but only if,—

(a) the conditions mentioned in the next following subsection are satisfied at the date of the return and have been satisfied at all times since the commencement of this Act; and

- (b) there is sent with the return a certificate, signed by the persons signing the certificates required to be so sent by the last foregoing section, that to the best of their knowledge and belief the said conditions are and have been satisfied as aforesaid :

Provided that if at any time it is shown that the said conditions are then satisfied in the case of any private company, the Board of Trade may on the application of the company's directors direct that, in relation to any subsequent annual returns of the company, it shall not be necessary for the said conditions to have been satisfied before that time, and the certificates sent with those returns shall in that event relate only to the period since that time.

- (2) The said conditions are—

- (a) that the conditions contained in the Seventh Schedule to this Act are satisfied as to the persons interested in the company's shares and debentures ; and
- (b) that the number of persons holding debentures of the company is not more than fifty (joint holders being treated as a single person) ; and
- (c) that no body corporate is a director of the company and neither the company nor any of the directors is party or privy to any arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture holders or trustees for debenture holders.

(3) A prosecution shall not be instituted in England in respect of any failure of a private company to comply with section one hundred and twenty-seven of this Act except by or with the consent of the Board of Trade.

(4) Any reference in this Act to an exempt private company shall be construed as referring to a company with respect to which the conditions mentioned in subsection (2) of this section are satisfied and have been satisfied at all times since the commencement of this Act or since the giving by the Board of Trade of a direction under the proviso to subsection (1) of this section.

(5) References in this section to the said conditions having been satisfied since the commencement of this Act shall, in relation to a company first registered after the commencement of this Act, be construed as referring to the conditions having been satisfied since the company's registration.

NOTES

The section combines section 110 (3) of the 1929 Act and section 54 of the 1947 Act. For other provisions of section 110 of the 1929 Act as amended by the 1947 Act, see generally, sections 125 to 127, *ante*. Section 54 of the 1947 Act came into force on July 1, 1948.

The effect of the section is that the general exemption of private companies from filing accounts with the annual return no longer applies. The section, however, preserves the privacy of a private company when it is more or less a family concern. If a company comes within the exceptions here mentioned, then it need not comply with the requirements of section 127. The conditions as to exemption which must be satisfied are : (i) compliance with subsection (2), *supra*, at all times since the commencement of this Act, and (ii) the sending with the annual return of a certificate signed both by a director and the secretary (as to which, see section 128), to the effect that the necessary conditions have been complied with. Unless these conditions are complied with, a private company must file its accounts with the annual return. If the said conditions have not been fulfilled at all times since the commencement of the Act, then the Board of Trade (to whom the directors must apply) on being satisfied that the company again complies with the conditions may direct that it shall be exempt from filing its accounts and the company will be regarded as an exempt private company as to all future returns from that date notwithstanding that it had not previously satisfied the said conditions (subsection (1)).

The conditions which a private company must satisfy in order to qualify as an exempt private company are set out in subsection (2) and the Seventh Schedule. The basic conditions are that no body corporate holds any of its shares or debentures,

that no person other than the holder is interested in any of the shares, that the number of debenture holders does not exceed 50, that no body corporate may be a director, and that there are no arrangements whereby the company's policy is capable of being determined by any person other than the directors, members, and debenture holders or their trustees. Certain exceptions apply in the case of normal dealings of a business nature as well as for cases of death of a holder, trustees holding on trust for a will or family settlement, certain cases of disability, trusts for employees, shares held by another exempt private company, banks or finance companies providing capital, and shares or debentures held in connection with any bankruptcies, liquidations, etc. (see further as to basic conditions and exceptions thereto, the Seventh Schedule).

A prosecution may only be instituted with the consent of the Board of Trade, if a company fails to include with its annual return a copy of its accounts (subsection (2)). An exempt private company is defined as one with respect to which the conditions of subsection (2) have at all times been satisfied since the commencement of the Act, or which satisfies the Board of Trade that the conditions have been satisfied since that time and the Board of Trade have made a direction accordingly under the proviso to subsection (1) (subsection (4)). Any reference in the section to the conditions having been satisfied will, in the case of a private company registered after the commencement of the Act, be construed as referring to the fulfilment of those conditions since the date the company was registered (subsection (5)).

See generally, as to the provisions of this section, the notes to section 54 in Magnus and Estrin on the Companies Act, 1947.

Private company.—See section 28.

Date of return.—See Sixth Schedule, Part II.

All times since the commencement of this Act.—The governing principle here is to keep exempt private companies within narrow limits, and the effect is to deny exemption unless this condition is complied with (but see the proviso to subsection (1), which relaxes on the application of this principle in the circumstances there given).

Certificate.—As to signature provisions, etc., see section 128.

Knowledge and belief.—I.e., that he did not know and could not reasonably have known that the company had ceased to be exempt.

Provided that if at any time . . . conditions are then satisfied.—But for this proviso, a private company which otherwise in all respects fulfils the requirements for an exempt private company might be compelled to continue its existence without the status here envisaged for companies of that type. To remove that anomaly, the Board of Trade, on being satisfied that the company again complies with the conditions, may order that it shall be exempt. It will be noted that under this proviso, a company is not automatically exempt as soon as it again complies with the necessary conditions, and does not become exempt until the Board of Trade so orders. An application to the Board for this purpose will have to be made by the company.

Seventh Schedule.—Most of the conditions are shown in this Schedule.

Debentures . . . not more than 50.—It should be noted that it is a basic condition (see the Seventh Schedule) that if any body corporate (even though it is itself an exempt private company) is the holder of a company's debentures, that company will not be treated as an exempt private company. This principle is not extended in all cases to the holding of shares by another company (*ibid.*).

Definitions.—"Member" (section 26); "private company" (section 28); "company", "debenture", "director", "share" (section 455 (1)); "body corporate" (section 455 (3)); "commencement of this Act" (section 462 (2)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

Meetings and Proceedings

130. Statutory meeting and statutory report.—(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company ;
- (d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company ; and
- (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

(10) This section shall not apply to a private company.

NOTES

The section combines section 113 of the 1929 Act and sections 2 (4), (5), 105 (2) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The section requires every limited company having a share capital (except a private company) to hold a statutory meeting within a period from one month to three months of being entitled to commence business and to forward the statutory report to every member.

Effect of changes.—The statutory report must be sent to every member at least 14 days before the statutory meeting (instead of seven days, as under the 1929 Act), but a shorter period will suffice if the members so agree. A drafting amendment has been made in subsection (9), *supra* (in accordance with the provisions of the 1947 Act) by extending liability for default by the company to "every officer of the company who is in default".

Date at which company is entitled to commence business.—See section 109, *ante*.

Statutory meeting and statutory report.—Normally, the statutory meeting is the first meeting held by a public company. The only type of meeting which could possibly precede it would be a requisitioned meeting (see section 132). The statutory meeting must be held one to three months from the date when the company was entitled to commence business (subsection (1), *supra*), and at least 14 days before that meeting a statutory report must be sent to all members, unless a shorter period is agreed to by the members (subsection (2), *supra*) (but see also section 133, as to the length of notice of meetings). A copy of the report must be filed with the Registrar (subsection (5), *supra*). The contents of the report and procedure at the meeting are dealt with in subsections (3), (6), (7) and (8), *supra*. The report must be certified by the directors (subsection (3), *supra*), and also (as to certain particulars therein) by the auditors, if any (subsection (4), *supra*). The notice convening a statutory meeting must state that the meeting so convened is the statutory meeting (*Gardner v. Iredale*, [1912] 1 Ch. 700; 9 Digest 563, 3730. Cf. a similar provision as to the annual general meeting in section 131 (1)).

It should be noted that default in holding the statutory meeting or sending the statutory report is one of the circumstances in which a company may be wound up by the Court (see section 222), and any shareholder in the event of such default, may apply to the Court for a winding up order (see section 224). The Court, however, may direct that the statutory report be filed or that the statutory meeting be held (see section 225).

Members entitled to attend and vote.—See section 134.

Consideration for which shares allotted.—For instance, purchase price of assets acquired.

Cash received.—I.e., the amount must be stated whether wholly for cash or partly for cash, as the case may be.

Abstract . . . receipts . . . payments . . . distinctive headings.—I.e., as to *receipts*: (i) cash received from the issue of shares; (ii) proceeds of sale of investments; (iii) trading receipts. As to *payments*: (i) purchase of plant and machinery; (ii) payments to vendor under terms of sale; (iii) purchase of stock and other trading payments; (iv) preliminary expenses; (v) balance in hand. The abstract is normally presented on a proper accounting basis, showing particulars both as to receipts and payments and the balance in hand. The term "abstract . . . receipts . . . payments" would imply that no account is taken therein of any accruals or provisions.

Preliminary expenses.—The section does not require details of each type of expense charged to this account, and a descriptive composite heading showing the estimate thereof is sufficient.

Contract . . . modification.—For instance, with reference to the modification of a contract set out in the prospectus.

Auditors.—See section 159.

Secretary.—See sections 176, 177, 200.

Definitions.—"Company limited by shares", "company limited by guarantee" (section 1 (2)); "member" (section 26); "private company" (section 28); "officer who is in default" (section 440 (2)); "company", "debenture", "director", "officer", "registrar of companies", "share" (section 455 (1)).

131. Annual general meeting.—(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) If default is made in holding a meeting of the company in accordance with the foregoing subsection, the Board of Trade may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions

as the Board think expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles ; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of the last foregoing subsection shall, subject to any directions of the Board of Trade, be deemed to be an annual general meeting of the company ; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be forwarded to the registrar of companies and recorded by him.

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Board of Trade under subsection (2) thereof, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

NOTES

The section combines section 112 of the 1929 Act and sections 1, 6 of the 1947 Act, with a minor amendment in subsection (5) effected by section 105 (1) and the Fifth Schedule to the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The section requires every company to hold an annual general meeting except in the year of its incorporation or the following year, so long as it is held within eighteen months of incorporation.

Effect of changes.—The annual general meeting (which normally must be held each year), is modified in the case of the first annual general meeting, which need not be held in the year of incorporation or in the following year so long as it is held at any time within eighteen months of the company's incorporation (*ibid.*), and the notice calling an annual general meeting must specify it as such (*ibid.*). The powers of the Court under section 112 (3) of the 1929 Act to call a general meeting in default no longer operate, such power now vesting in the Board of Trade, who may, in giving directions for that purpose, direct that one member present in person or by proxy, shall be a quorum (subsection (2)). Subsection (3) is new and corresponds with section 1 (3) of the 1947 Act. It provides, in effect, that a general meeting directed by the Board of Trade to be held will be deemed to be an annual general meeting of the company. If, in fact, it is held during the year in which the default occurred it is deemed to be the annual general meeting for that year. If it is not held during that year, while it will be deemed to be the annual general meeting for the year in which default was made, it will not be deemed to be the annual general meeting for the year in which it is in fact held unless, at the meeting, a resolution to that effect is passed, and notice is given to the Registrar accordingly (subsection (4)). A penalty is imposed on the company and every officer in the case of any default in complying with any direction of the Board of Trade made under subsection (2) with respect to the holding of a company meeting or failing to send a copy of the resolution to the Registrar as required by subsection (4) (subsection (5)).

It should be noted that an annual general meeting is now statutory.

Year.—See *Gibson v. Barton*, cited in note to section 124, *ante*.

Annual general meeting.—The business which may be transacted at that meeting is either "ordinary", or "special" (see the First Schedule, Table A, Part I, article 52). As to the length of notice for calling such meetings, see section 133, and for the general provisions regarding voting, proxies, etc., see sections 134 to 139. See also section 140 (6), which overrides the articles as to the business which may be transacted at the annual general meeting.

Other meetings.—These are: (i) the statutory meeting (section 130), and (ii) requisitioned meetings (section 132).

shall specify the meeting as such.—This ensures that the shareholders shall know, from the notice convening the meeting, that it is intended to be the annual

general meeting. For a suggested form of notice, see Magnus and Estrin on the Companies Act, 1947, Appendix A, Form No. 1. As to the position where the notice does not specify the meeting as such, see *Gardner v. Iredale*, [1912] 1 Ch. 700; 9 Digest 563, 3730 (a case dealing with the statutory meeting under section 130).

Date of incorporation.—See section 13.

Default in holding.—I.e., if within the statutory period the company has either not held one at all or, if a meeting took place, it was not convened in the proper manner (see *Gardner v. Iredale*, *supra*).

Direct the calling of a general meeting.—The normal practice on an application to the Court under the 1929 Act was to direct that the directors should call the meeting. The Court itself summoned the meeting only if there were no directors who could be served. Presumably, the same procedure will be followed by the Board of Trade under this subsection.

Other related provisions.—Sections 183, 184 (appointment and removal of directors); section 160 (appointment and removal of auditors). For resolutions, of which special notice is required (a new type of resolution introduced by this Act), see section 142.

Definitions.—"Member" (section 26); "default fine", "officer in default" (section 440); "company", "director", "officer", "registrar" (section 455 (1)).

132. Convening of extraordinary general meeting on requisition.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and forty-one of this Act.

NOTES

The section reproduces section 114 of the 1929 Act.

The effect of the section is that an extraordinary general meeting must be convened by the directors on the requisition of the specified number of members. In the event of default by the directors, the requisitionists may themselves convene the meeting and the expense so incurred is to be deducted from the directors' fees.

Requisition of members.—See also section 140. If the requisitionists are joint holders of shares, each joint holder should sign the requisition (*Patent Wood Keg Syndicate, Ltd. v. Pearce* (1906), 50 Sol. Jo. 650; 9 Digest 564, 3740).

Paid up capital.—See section 61.

Voting rights.—See generally, sections 134 to 139.

Registered office.—See section 107.

Several documents in like form.—See *Fruit and Vegetable Growers' Association, Ltd. v. Kekewich*, [1912] 2 Ch. 52; 9 Digest 563, 3738.

Notice convening the meeting.—Upon a valid requisition, the directors should include in the notice convening the meeting all matters which the requisitionists require to be dealt with, so far as they can lawfully be dealt with at the meeting and, if they do not, the requisitionists may themselves convene a meeting (*Isle of Wight Rail. Co. v. Tahourdin* (1883), 25 Ch.D. 320, C.A.; 10 Digest 1155, 8179). If the shareholders can convene the meeting, an order will not be made to compel the directors to do so (*MacDougall v. Gardiner* (1875), 10 Ch. App. 606; 9 Digest 582, 3897).

Meeting to be convened within 21 days.—A meeting cannot be validly convened within the 21 days by the secretary acting without the authority of the board (*Re State of Wyoming Syndicate*, [1901] 2 Ch. 431; 9 Digest 564, 3743).

Special resolution.—As to the notice required for a special resolution, see section 141.

Business to be transacted.—A meeting convened on requisition cannot transact any business other than that for which it has been expressly convened (*Patent Wood Keg Syndicate, Ltd. v. Pearce, supra*).

Other related provisions.—First Schedule, Table A, Part I, articles 49 (power of directors to convene extraordinary meeting); 52 to 74 (proceedings at general meeting and votes of members); 131 to 134 (notices to members); 50 (notices of general meetings).

Definitions.—"Company not having a share capital" (section 1 (2)); "member" (section 26); "articles", "company", "director", "document", "share" (section 455 (1)).

133. Length of notice for calling meetings.—(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

- (a) in the case of the annual general meeting, twenty-one days' notice in writing; and
- (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by the foregoing subsection) a meeting of the company (other than an adjourned meeting) may be called—

- (a) in the case of the annual general meeting, by twenty-one days' notice in writing; and
- (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

NOTES

The section combines section 115 (1) of the 1929 Act and section 2 (1), (2) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

Effect of changes.—By section 115 (1) of the 1929 Act, the length of notice for convening a meeting, if not provided for in the articles, was seven days, except in the case of a meeting to pass a special resolution. The period is increased to 21 days for the annual general meeting and 14 days for any other meeting except in the case of a meeting convened to pass a special resolution, where the period remains at 21 days, or a meeting other than the annual general meeting in the case of an unlimited company, where the period remains at seven days, and any provision in a company's articles for a shorter period in the case of any meeting is void. The articles may, of course, provide for a longer period. These requirements may be dispensed with if it is so agreed, in the case of the annual general meeting, by all the members entitled to attend and vote, and in any other case, by a 95 per cent. majority.

Company's articles shall be void.—"Void" means void *ab initio* and altogether destitute of any legal effect (see *Cundy v. Lindsay* (1878), 3 App. Cas. 459, H.L.; 35 Digest 98, 72) as opposed to "voidable" which means something which, while good at the time of making, may be avoided subsequently.

Adjourned meeting.—See First Schedule, Table A, Part I, article 57.

Meeting other than an adjourned meeting.—*Quære* whether a meeting called by the Board of Trade under section 131 (2), is affected by this section. It seems that it is, since, although the Board of Trade has power to disregard the company's articles in convening such meeting, no power seems to be conferred to disregard the provisions of the Act for that purpose. Such meeting is deemed to be an annual general meeting of the company (see section 131 (3)), and is therefore a meeting which requires 21 days' notice. The power of waiver under subsection (3), *supra*, would also seem to apply to such meetings, since it can only operate in the case of an annual general meeting by the consent of all the members entitled to attend and vote thereat, including the dissident members at whose instance the Board will have intervened for the purpose of holding such meeting.

Annual general meeting.—See section 131.

Notice in writing.—The required number of days' notice must be clear days exclusive of the day of service and the day of the meeting and any provision in the company's articles to the contrary must be disregarded (*Re Hector Whaling, Ltd.*, [1936] Ch. 208; Digest Supp.). See also *Re Railway Sleepers Supply Co.* (1885), 29 Ch.D. 204; 9 Digest 580, 3872; *Sneath v. Valley Gold, Ltd.*, [1893] 1 Ch. 477, C.A.; 42 Digest 957, 296. As to waiver of notice, see subsection (3), *supra*.

Meeting other than annual general meeting.—See sections 130, 132, and section 141.

Called by shorter notice.—There is nothing to prevent a company calling a meeting by shorter notice than that required by subsection (2), *supra*, provided the conditions of subsection (3), *supra*, are complied with.

Meeting other than annual general meeting.—See sections 130, 132 and 141.

Deemed to have been duly called.—The four requirements for a properly convened meeting are: (i) the meeting must be called by the proper authority; (ii) proper length of notice must be given; (iii) the notice must be given to all members entitled to receive it; and (iv) the notice must comply with the necessary requirements (see generally, the First Schedule, Table A, Part I, articles 50, 131 to 134).

Members entitled to attend and vote.—See section 134, and generally, sections 136 to 139.

Nominal value of shares.—I.e., of the shares actually issued. See further, as to the various categories of capital, section 61.

Total voting rights.—No provision is here made (as in the case of a company having a share capital) for a majority in number as well as in voting power. In the case of a company having a share capital, had a like provision for a 95 per cent. majority of voting power alone been made, one member himself holding 95 per cent. of the voting power could override the 5 per cent. minority which might be held by a hundred or more members, and thus nullify the object of the Act, which is to protect the rights of such minority. Hence in that case it is provided that the 95 per cent. majority must also be represented by an actual majority in number. In the case of a company which has no share capital, and, if it adopts Table C, will give one vote to each member (see Table C, article 20), this safeguard is unnecessary.

Definitions.—"Unlimited company" (section 1 (2)); "member" (section 26); "special resolution" (section 141); "articles", "share" (section 455 (1)).

134. General provisions as to meetings and votes.—The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

- (a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force ;
- (b) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting ;
- (c) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum ;
- (d) any member elected by the members present at a meeting may be chairman thereof ;
- (e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

NOTES

The section reproduces section 115 (1) (b)–(f) of the 1929 Act. As to the provisions of that section dealing with the length of notice, see section 133, *ante*.

The section makes provision for the convening of and calling of meetings in cases where no provision therefor is made in a company's articles.

Notices required to be served by Table A.—See the First Schedule, Table A, Part I, articles 50, 131 to 139.

Power of two members to call a meeting.—This applies (*inter alia*) where there are regulations, but no directors to carry them out (*Re Brick and Stone Co.*, [1878] W.N. 140 ; 9 Digest 556, 3681).

Quorum.—I.e., the minimum number who must be present personally or by proxy in order to constitute a valid meeting (see also Table A, Part I, article 53). A resolution passed at a meeting in which there is no quorum is void (*Re Cambrian Peat, Fuel and Charcoal Co. Ltd.*, *De la Mott's and Turner's Case* (1875), 31 L.T. 773 ; 9 Digest 569, 3773).

Chairman.—See Table A, Part I, articles 55 to 57.

Vote.—See Table A, Part I, articles 62 to 73.

Definitions.—"Company having a share capital" (section 1 (2)) ; "member" (section 26) ; "private company" (section 28) ; "company", "share", "stock", "Table A" (section 455 (1)).

135. Power of court to order meeting.—(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient ; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with an order under the foregoing subsection shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

NOTES

The section combines section 115 (2) of the 1929 Act and section 6 of the 1947 Act. The latter section came into force on July 1, 1948.

The section enables the Court to convene a meeting with all necessary consequential directions, including one as to quorum (1947 Act, section 6), where a meeting cannot be convened either under the articles or under section 134.

Effect of change.—The new provision whereby the Court, in giving directions under the section, may provide that one member may constitute a meeting, is merely declaratory. An unreported case had already decided that the Court had this power, but some doubt has arisen as to whether, in fact, it could be exercised by the Court. This doubt has now been removed. *Cf.* a similar power conferred on the Board of Trade under section 131 (2).

Manner in which meeting may be called.—See section 130 to 132.

Conduct of meeting in manner prescribed by articles or this Act.—See section 134, First Section, Table A, Part I, articles 52 to 61.

Application to Court.—The application is made by summons under R.S.C., Order 53B, r. 8 (f). No appearance is necessary (*ibid.*, r. 9).

Proxies.—See section 136, First Schedule, Table A, Part I, articles 67 to 73.

Definitions.—“ Member ” (section 26) ; “ articles ”, “ company ”, “ director ”, “ the Court ” (section 455 (1)).

136. Proxies.—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting :

Provided that, unless the articles otherwise provide,—

- (a) this subsection shall not apply in the case of a company not having a share capital ; and
- (b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion ; and
- (c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member ; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(4) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding one hundred pounds :

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

NOTES

The section reproduces section 5 of the 1947 Act, except for subsection (5) of that section, as to which, see sections 138, 141 (4). That section came into force on July 1, 1948.

General Note.—The section provides for the appointment of proxies to attend and vote at meetings of a company (subsection (1)), or at meetings of any class of members of a company (subsection (5)). Any member of a company which has a share capital who is entitled to attend and vote at a meeting may appoint a proxy, who need not himself be a member. A proxy is entitled to vote only on a poll, unless the articles otherwise provide. In the case of a private company, the proxy has the same right as a member to speak at the meeting, but not more than one proxy may be appointed to attend on the same occasion, unless the articles otherwise provide. The right to appoint a proxy does not apply in the case of a company not having a share capital, unless the articles so provide (subsection (1)). Every notice convening a meeting must include a reasonably prominent statement of the rights conferred by the section, with a penalty in default (subsection (2)). A company's articles cannot effectively provide for the lodgment with the company of the instrument appointing the proxy or any other necessary document relating thereto more than 48 hours before the meeting in respect of which the appointment is made (subsection (3)). Any invitations to appoint specified persons as proxies which are issued at the company's expense must be sent to all members entitled to be sent a notice of the meeting and to vote thereat by proxy, unless it be a form of appointment naming the proxy or a list of persons willing to act as proxy sent to a member at his request in writing and the form or list is available on request in writing to every member entitled to vote at the meeting. A penalty is imposed in default (subsection (4)).

The provisions are all new. There were no provisions in the 1929 Act conferring on a member a right to vote on a poll by proxy. A member's right so to vote could arise only by contract. (*Harben v. Phillips* (1883), 23 Ch.D. 14, C.A.; 9 Digest 673, 4487). Table A conferred such a right, but a company need not adopt Table A and its own articles might provide that a member should have no right to vote by proxy or might restrict the right. The right is now put on a statutory basis.

See further as to the provisions of this section, the notes to section 5 in Magnus and Estrin on the Companies Act, 1947.

Right of proxy to speak.—It will be noted that this provision is limited to private companies only.

Proxy entitled to vote only on a poll.—Unless the articles so provide, a proxy cannot vote on a show of hands. (*Bombay-Burmah Trading Corporation v. Dorabji Cursetji Shroff*, [1905] A.C. 213, P.C.; 9 Digest 576, 3837). As to the right to demand a poll, see section 137.

Reasonable prominence.—What is "reasonable prominence" is a question of fact in each case. A notice tucked away inconspicuously would, of course, not comply with this requirement. On the other hand, it does not appear necessary for the statement to stand out in bold letters. A useful guide is the wording of section 2 (2) of the Hire Purchase Act, 1938 (31 Halsbury's Statutes 660), which requires the statutory notice to be inserted in a hire purchase agreement to be "at least as prominent as the rest of the contents". For a form of statement, see Magnus and Estrin on the Companies Act, 1947, Appendix A, Form No. 1.

Subsection (3).—The provisions of this subsection overrule the decisions in *Shaw v. Tati Concessions, Ltd.*, [1913] 1 Ch. 292; 9 Digest 581, 3881, and *McLaren v. Thomson*, [1917] 2 Ch. 261, C.A.; 9 Digest 575, 3826, where it was held that proxies lodged 48 hours before the time to which the meeting is adjourned but after the original meeting were invalid. As the effect of such decisions was to require the lodgment of a proxy more than 48 hours before an adjourned meeting, this provision would be void under this subsection.

Instrument appointing a proxy.—See the First Schedule, Table A, Part I, articles 68, 69, and for forms, *ibid.*, articles 70, 71.

Documents necessary to show validity of appointment.—See the First Schedule, Table A, Part I, article 69.

Subsection 4: Knowingly and wilfully.—The mere fact that a person is an officer of the company will not automatically render him liable to a fine under this subsection; he will only be liable where he has wilfully and deliberately been a party to the contravention.

Definitions.—"Member" (section 26); "private company" (section 28); "officer who is in default" (section 440 (2)); "articles", "company", "document", "officer", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statute 1001).

137. Right to demand a poll.—(1) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made either—

(i) by not less than five members having the right to vote at the meeting ; or

(ii) by a member or members representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting ; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the foregoing subsection a demand by a person as proxy for a member shall be the same as a demand by the member.

NOTES

The section reproduces section 4 (1) (2) of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that members now have the right to demand a poll and such right cannot be excluded by the articles. It may be exercised on any question except the election of the chairman or the adjournment of the meeting and is effectively demanded if made by (a) not less than five members who have the right to vote at the meeting or (b) members representing a specified proportion of the total voting rights or (c) holding a specified proportion of the paid-up share capital of the company carrying the right to vote at the meeting. A proxy has the same right as the member for whom he is proxy to join in demanding a poll. The section replaces section 117 (4) of the 1929 Act.

Void.—For the meaning of “ void ”, see note to section 133.

Right to demand a poll.—See also the First Schedule, Table A, Part I, article 58. Section 117 (4) of the 1929 Act conferred a limited right to demand a poll in the case of a meeting at which an extraordinary or special resolution was submitted (see now section 141). A poll may now be demanded at any general meeting.

Five members.—It will be noted that the five members need not between them represent any specific voting rights or hold between them any specific proportion of shares. On the other hand, they must have the right to vote at the meeting. For example, preference shareholders cannot join in demanding a poll at a meeting at which only ordinary shareholders are entitled to vote.

Right to vote.—This depends on the articles. In the absence of special provision, Table A applies (see *ibid.*, Part I, articles 62 to 66).

Subsection 1 (b) (iii).—To comply with this sub-paragraph, the member or members must hold between them not less than one-tenth of the paid-up shares of those classes which carry voting rights.

Subsection (2) : Instrument appointing a proxy.—See the First Schedule, Table A, Part I, articles 68 to 73. As to proxies generally, see section 136.

Right of proxy to join in demanding a poll.—The provision is new. Article 72 of Part I of Table A and the corresponding provision in previous Acts conferred this right, but no company was compelled to adopt that article, and, if it did not do so, it could exclude that right. The position now is that, whether Table A is adopted or not, a proxy has the same right as regards a poll as the member for whom he is proxy.

Definitions.—“ Member ” (section 26) ; “ articles ”, “ company ”, “ share ” (section 455 (1)) ; “ person ” (Interpretation Act, 1889, section 19).

138. Voting on a poll.—On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

NOTES

The section reproduces the opening provision of section 5(5) of the 1947 Act. As to the remaining provisions of that subsection, see section 141 (4). That section came into force on July 1, 1948.

The section makes provision for the casting of votes at a poll by a member entitled to more than one vote. Such member need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Poll.—As to the right to demand a poll, see section 137.

Member entitled to more than one vote.—It is usual to provide in the articles that every member present in person has one vote on a show of hands, and, on a poll, one vote for each share of which he is the holder (see, e.g. First Schedule, Table A, Part I, article 62).

Member need not cast all his votes the same way.—The section does not introduce a new principle, since, in practice, it has always been open to members to use their votes as they wish. It is inserted to clarify the position in view of doubts expressed as to its legality.

Definitions.—"Member" (section 26); "company" (section 455 (1)).

139. Representation of corporations at meetings of companies and of creditors.—(1) A corporation, whether a company within the meaning of this Act or not, may—

- (a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

NOTES

The section reproduces section 116 of the 1929 Act. The section provides for the attendance of a corporation which is a member or creditor of a company to attend meetings of members or creditors of the company by nominating a person to represent it.

Whether a company within the meaning of Act or not.—The provision covers foreign companies, thus overruling the decision in *Blair Open Hearth Furnace Co., Ltd. v. Reigart* (1913), 108 L.T. 665; 9 Digest 575, 3823.

Resolution of directors.—The right to vote in such a case depends on whether the resolution was properly passed and not on the sufficiency of the evidence of its passing tendered at the meeting (*Colonial Gold Reef, Ltd. v. Free State Rand, Ltd.*, [1914] 1 Ch. 382; 9 Digest 572, 3804).

Meeting of the company.—See sections 130 to 132 and 289 to 291.

Meetings of creditors.—See sections 252, 288, 299, 300, 346. The Company (Winding-up) Rules, 1929, rule 144, provides that such representative must produce a copy of the resolution appointing him which must be either under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation.

Quorum.—A representative of a corporation which is a shareholder can be counted as one of a quorum (*Re Kelantan Coconut Estates, Ltd. and Reduced* (1920), 64 Sol. Jo. 700; 9 Digest 570, 3781). As to quorum see section 134 (c).

Definitions.—"Member" (section 26); "company", "debenture", "director", "share" (section 455 (1)); "corporation" (section 455 (3)).

140. Circulation of members' resolutions, etc.—(1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists,—

- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

- (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under the foregoing subsection shall be—

- (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates ; or
- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred pounds.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company :

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

- (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting ; and

- (ii) in the case of any other requisition, not less than one week before the meeting ; and

- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto :

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter ; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

NOTES

The section reproduces section 3 of the 1947 Act. That section came into force on July 1, 1948.

General note.—The purpose of the section is to facilitate the introduction by ordinary members of a company on their own account of resolutions at the annual general meeting, and to enable them to make use of the company's machinery to inform other members of the purpose for which such resolution has been introduced, or of their reasons for opposing resolutions submitted by the directors at any general meeting.

Subject to the following provisions of this section.—See subsections (2) to (4), *supra*. Unless the formalities required by those subsections are complied with, the duty of the company under this section does not arise.

Requisition in writing.—This may consist of one or more documents (see subsection (4) (a)). The requisition is the essential instrument whereby the requisitionists may require the company to circulate the proposed resolutions, etc.

Number of members.—As to the number of members necessary for the requisition, see subsection (2). As to other conditions to be complied with by the requisitionists, see subsection (4).

Requisition at requisitionists' expense.—The section, in the first instance, places the expense upon the requisitionists, and, unless there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses, the company is not bound to give notice of any such resolution or to circulate any such statement (subsection (4)). The company, may, however, resolve to reimburse the requisitionists. This reimbursement must, of necessity, be in the nature of a refund since the section does not appear to confer any power upon the company to dispense with the requirements of subsection (4).

Resolution which may properly be moved.—As to different types of resolution, see sections 141, 142. A resolution is not valid and is therefore not one which may properly be moved (i) if it is *ultra vires*; or (ii) if it is in respect of a matter which requires a particular type of resolution and the resolution is not of that type, e.g., where a special resolution is required, an ordinary or extraordinary resolution will not be valid; or (iii) if it is contrary to public policy. It will be noted that the resolution must be one which is intended to be moved at that meeting. It should also be noted that such resolution cannot be moved at any meeting other than the annual general meeting. This provision is thus distinguished from the right conferred by subsection (1) (b) to require the distribution of statements, which may be exercised in respect of any general meeting.

Number of members necessary for a requisition.—The provisions as to computation are alternative and if either condition is satisfied, the requisition, subject to the fulfilment of the conditions in subsection (4), can validly be made. It should be noted that these requirements are *minimum* requirements. In cases under paragraph (a), 5 per cent. of the total voting rights is the minimum voting power necessary and this percentage need not necessarily be held by a minimum of 100 members. In cases under paragraph (b), however, it is necessary for at least one hundred members to join in the requisition, such members holding between them a minimum of shares on which there has been paid up at least £10,000. It is not essential that each of those members should himself have paid up £100. The £100 referred to in the subsection is merely an average sum per member. On the other hand, those sums must be actually paid up. For example, the average holding may consist of one hundred £1 shares, all fully paid up, or two hundred £1 shares of which 10s. has been paid up, but not one hundred £1 shares on which only 10s. has been paid up.

Right to vote.—The right to vote must be at the meeting to which the requisition relates. It will be noted that these words do not occur in paragraph (b) where the criterion is that of paid-up capital as opposed to voting rights which is the criterion in paragraph (a). Voting rights, of course, can only be exercised in respect of something done at a meeting, and it is therefore necessary to specify the particular meeting. In the case of paragraph (b), other considerations apply.

Members entitled to notice.—See, e.g., the First Schedule, Table A, Part I, article 134. See also *Dickson v. Halesowen Steel Co.*, [1928] W.N. 33; Digest Supp. An actual copy of the resolution must be sent to members entitled to have notice of the meeting sent to them. Other members should be given notice of the general effect of the resolution. They are not, however, entitled to have a copy of any statement to be circulated, nor even any notice of its general effect.

Manner permitted for service of notice.—See e.g., the First Schedule, Table A, Part I, articles 131 to 133.

Manner permitted for giving notice.—It will be noted that the reference here is to "giving" of notice and actual personal service is not required. Articles 131 to

134 of Part I of Table A deal with the giving of notice and it will be seen that article 131 deals with service proper while articles 132 to 134 are concerned with the giving of notice to such persons as cannot or need not be served. The manner permitted for giving notice of meetings would therefore appear to be one of the modes enumerated in articles 132 to 134.

Subsection (4).—There is nothing to prevent the directors accepting a requisition which does not comply with the requirements of the subsection, if they so desire, but they cannot be compelled to do so. On the other hand, if the requirements of the subsection are complied with, the directors cannot refuse to give notice of such resolution or to circulate such statement.

Registered office.—See section 107.

Subsection 5: Defamatory statements.—The Court is empowered to absolve the company from circulating the statement if satisfied that the statement is, in fact, defamatory. The application is made by the company or any other interested party. It is made by summons under R.S.C., Order 53B, rule 8 (t); S.I. 1948, No. 1756. No appearance need be entered (*ibid.*, rule 9).

Subsection 6: Business which may be dealt with at an annual general meeting.—See, e.g., the First Schedule, Table A, Part I, article 52.

Definitions.—"Member" (section 26); "annual general meeting" (section 131); "officer who is in default" (section 440 (2)); "company", "officer", "share", "the Court" (section 455 (1)).

141. Extraordinary and special resolutions.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given :

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

NOTES

The section combines section 117 of the 1929 Act and sections 2 (3) and 5 (5) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The section makes provision for the procedure and the majorities required for the passing of extraordinary and special resolutions.

Effect of changes.—(i) *Waiver of majority requirements*—Section 117 (2) of the 1929 Act required such waiver in the case of a special resolution to have the support of all the members. It is now provided that the consent of 95 per cent. shall be sufficient.

(ii) *Right to demand a poll.*—Section 117 (4) of the 1929 Act conferred upon the members present at a meeting at which an extraordinary or special resolution is submitted the right to demand a poll in certain conditions. In view of the fact that a right to demand a poll at any general meeting is now conferred by section 137, that provision is now redundant. It was repealed by section 4 (3) of the 1947 Act and is not here reproduced.

(iii) *Computation of majority.*—Section 117 (5) of the 1929 Act prefaced this provision by the words "when a poll is demanded in accordance with this section". Subsection (4) of that section now having been replaced by section 137, these words are now omitted (see section 4 (3) of the 1947 Act). Moreover, the subsection now has no reference (as it would have had, by implication, if the previous wording had been retained) to the majority required under subsection (2), which is already provided for in that subsection. The majority on a poll otherwise than under subsection (2) is now, in view of section 138, to be computed by reference to the votes cast for and against the resolution and not, as under the 1929 Act, by reference to the number of votes to which each member is entitled.

Majority of not less than three-fourths.—As to the validity of an article which requires a larger majority, see *Ayre v. Skelsey's Adamant Cement Co., Ltd.* (1904), 20 T.L.R. 587; affirmed on other grounds (1905), 21 T.L.R. 464, C.A.; 9 Digest 101, 429).

Notice specifying intention to propose an extraordinary or special resolution.—See also *MacConnell v. Prill (E.) & Co., Ltd.*, [1916] 2 Ch. 57; 9 Digest 565, 3755. As to circumstances in which the notice can be dispensed with, see *Re Oxted Motor Co.*, [1921] 3 K. B. 32; 9 Digest 565, 3756.

Proxies.—See section 136.

Twenty-one days' notice.—The twenty-one days must be clear days exclusive of the day of service and the day on which the meeting is to be held; the articles cannot alter the statutory period (*Re Hector Whaling, Ltd.*, [1936] Ch. 208; Digest Supp.).

Majority required for waiver.—See section 133.

Definitions.—"Member" (section 26); "articles", "company", "share" (section 455 (1)).

142. Resolutions requiring special notice.—Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

NOTES

The section reproduces section 2 (6) of the 1947 Act, which came into force on July 1, 1948.

The section introduces a new type of resolution, i.e., an ordinary resolution to be carried by a bare majority but of which special notice is required. It refers to resolutions proposed by members of the company, which a member may do at the annual general meeting (see section 140). For examples of such resolutions, see sections 160, 184, 185.

Special notice.—The special notice here required is notice to the company, who must give to the members the same notice as it gives of the meeting, or, where this is not practicable, substituted notice of twenty-one days.

Length and mode of notice to members.—See section 133.

Meeting called twenty-eight days or less after notice.—The annual general meeting, while it must be held during the year (see section 131), need not be held on a particular date. The members may not know the exact date or the date may be brought forward. If, after notice of such resolution is given, the company actually convenes a meeting for a date twenty-eight days or less after such notice, the directors cannot use this as an excuse for refusing to take the resolution or to allege that the resolution is invalid.

Definitions.—"Member" (section 26); "articles", "company" (section 455 (1))

143. Registration and copies of certain resolutions and agreements.—(1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him :

Provided that an exempt private company need not forward a printed copy of any such resolution or agreement if instead it forwards to the registrar of companies a copy in some other form approved by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(a) special resolutions ;

(b) extraordinary resolutions ;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions ;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members ;

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section two hundred and seventy-eight of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the two last foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

NOTES

The section combines section 118 of the 1929 Act and section 7 of the 1947 Act. The last-mentioned section came into force on July 1, 1948.

The section provides for the registration with the Registrar of Companies of certain resolutions and agreements and for the annexation to copies of the articles issued after such resolution or agreement of copies of every such resolution or agreement for the time being in force.

Effect of change.—In the case of an exempt private company, the copies to be registered need not be in print, provided they are in some other form approved by the Registrar.

Exempt private company.—See section 129. Such companies are not exempt from the provision as to the registration of the resolutions, etc., but the copies forwarded for registration need not be in print.

Resolutions agreed to by all members.—It was held in *Parker and Cooper, Ltd. v. Reading*, [1926] Ch. 975 ; Digest Supp., that where all the co-operators assent, the formalities required for the passing of a resolution need not be complied with. This provision now gives statutory recognition to the principle there laid down.

Definitions.—"Member" (section 26); "exempt private company" (sections 129, 455 (1)); "extraordinary resolution", "special resolution" (section 141); "resolution for voluntary winding-up" (section 278 (2)); "default fine", "officer who is in default" (section 440); "articles", "company", "officer", "registrar of companies" (section 455 (1)).

144. Resolutions passed at adjourned meetings.—Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

NOTES

The section reproduces section 119 of the 1929 Act. The section removes some of the difficulties caused by the decision in *Neuschild v. British Equatorial Oil Co.*, [1925] Ch. 346; Digest Supp.

Adjourned Meeting.—An adjourned meeting is legally a continuation of the original meeting (*Scadding v. Lovant* (1851), 3 H.L. Cas. 418; 13 Digest 341, 794), but an adjourned ordinary meeting cannot be an extraordinary meeting (*Wills v. Murray* (1850), 4 Exch. 843; 9 Digest 516, 3387). The articles sometimes provide that the members present at the adjourned meeting shall form a quorum (see e.g., the First Schedule, Table A, Part I, article 54, *post*), but such a provision does not apply to a meeting of a special class of shareholders (*Hemans v. Hotchkiss Ordnance Co.*, [1899] 1 Ch. 115, C.A.; 9 Digest 570, 3783).

The present section now provides that a resolution passed at an adjourned meeting shall not be treated as having been passed at the original meeting.

Definitions.—"Company", "director", "share" (section 455 (1)).

145. Minutes of proceedings of meetings of company and of directors and managers.—(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

NOTES

The section combines section 120 of the 1929 Act and section 8 of the 1947 Act. The latter section came into force on July 1, 1948.

Effect of change.—A penalty is now imposed for default in keeping minutes as required by the section.

Entry of contracts in minutes.—Where under the articles a contract can only stand if a minute of the directors approving thereof is entered in the books, the entry must be made within a reasonable time (*Toms v. Cinema Trust Co., Ltd.*, [1915] W.N. 29; 9 Digest 522, 3426).

Minutes to be kept in books.—A collection of loose leaves fastened together between the covers but readily detachable is not a book within this provision (*Hearts of Oak Assurance Co., Ltd. v. Flower (James) & Sons*, [1936] Ch. 76; Digest Supp.), but the minute book may be transcribed or made from rough minutes taken at the time of the meeting (*Re Jennings* (1851), 1 I.Ch.R. 236; 9 Digest 326, f).

Chairman's signature.—The chairman's signature need not be written at the meeting (*Re Llanharry Hematite Iron Ore Co., Ltd.* (1864), 4 De G. J. & Sm. 426, at p. 432; 9 Digest 581, 3884).

Minute as evidence.—The minute is only *prima facie* evidence (*Re Indian Zoedone Co.* (1884), 26 Ch.D. 70, C.A.; 9 Digest 581, 3887) unless the articles provide that it shall be conclusive (*Kerr v. Mottram (John), Ltd.*, [1940] Ch. 657; [1940] 2 All E.R. 629). An entry in the minute book, signed by the chairman, of a resolution accepting an agreement is sufficient to satisfy the Statute of Frauds (*Jones v. Victoria Graving Dock Co.* (1877), 2 Q.B.D. 314, C.A.; 9 Digest 522, 3429), and it is not necessary to prove that he was in fact the chairman (*Sheffield, Ashton-under-Lyne and Manchester Rail. Co. v. Woodcock* (1841), 7 M. & W. 574; 10 Digest 1133, 7989). In the absence of a minute, other evidence can be given (*Re Pyle Works (No. 2)*, [1891] 1 Ch. 173; 9 Digest 478, 3134), and if the books of the company show a record of a transaction which would not be valid without a resolution of the directors, the Court will, in the absence of other evidence, presume that such a resolution has been passed (*Knight's Case* (1867), 2 Ch. App. 321; 9 Digest 518, 3397).

Definitions.—"Default fine", "officer who is in default" (section 440); "company", "director", "officer" (section 455 (1)).

146. Inspection of minute books.—(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the first day of November, nineteen hundred and twenty-nine, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

NOTES

The section reproduces section 121 of the 1929 Act.

Registered office.—See section 107.

Application to the Court.—The application is by summons under R.S.C., Order 53B, r. 8 (b), and can be made only by a member. No appearance is necessary (*ibid.*, r. 9). The affidavit in support of the summons must state that application was made at the proper time, and, where copies are demanded, an offer to pay the proper fee for the copies must also be stated. The order should provide for payment in the case of copies. For form of application, see Ency. Court Forms, title Companies, Vol. 6, p. 231, Form No. 121.

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "articles", "company", "officer", "the Court" (section 455 (1)).

Accounts and Audit

147. Keeping of books of account.—(1) Every company shall cause to be kept proper books of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

(2) For the purposes of the foregoing subsection, proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors :

Provided that if books of account are kept at a place outside Great Britain there shall be sent to, and kept at a place in, Great Britain and be at all times open to the inspection of the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds :

Provided that—

(a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty ; and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

NOTES

The section combines section 122 (1), (2), (3), of the 1929 Act and sections 12 (1), (2), 13 (8), and 20 of the 1947 Act. The provisions of the 1947 Act here referred to came into force on July 1, 1948.

Effect of changes.—(i) *Definition of "proper books of account"*.—The obligation to keep proper books of account remains, but proper books will not be deemed to have been kept unless they give a true and fair view of the company's affairs and explain its transactions (subsections (1), (2)). (ii) *Companies operating abroad*.—New provisions are made in the case of companies operating outside Great Britain, who must send to and keep at a place in Great Britain such accounts and returns as will disclose with reasonable accuracy the financial position at intervals of not less than six months, and must include such particulars as will enable the annual accounts to be prepared in the prescribed manner (subsection (3)). (iii) *Director's liability*.—A director may escape liability for failing to comply with the provisions as to accounts if he can show that he reasonably relied on a competent and reliable person whose duty it was to see that the provisions were complied with and "who was in a position to discharge that duty" (subsection (4)).

Proper books of account.—See *Newton v. Birmingham Small Arms Co., Ltd.*, [1906] 2 Ch. 378 ; 9 Digest 554, 3664.

True and fair view.—The section is not concerned with any difficulty on the part of a director as to lack of knowledge about accounts since penalties are imposed in certain conditions for failure to keep proper books (see subsection (4), *supra*). But they are entitled to rely on the work of competent persons (*ibid.*).

Registered office.—See section 107.

Inspection of accounts.—See also the First Schedule, Table A, Part I, articles 123 to 125.

Financial position of business abroad.—It would seem that the information required is such as could reasonably be required if the books were kept in Great Britain, and, in any event, must be sufficient to enable the company to prepare a balance sheet and profit and loss account in accordance with the Act.

Balance sheet and profit and loss account.—See sections 148 to 153.

Directors' liability.—See also sections 329 and 331, *post*. Further penalties are also imposed on directors, managers, and other officers by the Larceny Act, 1861, sections 82 to 84 (4 Halsbury's Statutes 553, 554). Directors are not guilty of negligence if they act in reliance on the officers of the company (*Dovey v. Cory*, [1901] A.C. 477; 9 Digest 469, 3062), nor are they bound to know the contents of the company's books (*Hallmark's Case* (1878), 9 Ch.D. 329, C.A.; 9 Digest 469, 3071; *Dovey v. Cory*, *supra*; *Re City Equitable Fire Insurance Co., Ltd.*, [1925] Ch. 407, C.A.; Digest Supp.), but they must take reasonable steps to secure compliance. The fact that the words "by order of the directors" appear on the balance sheet is not sufficient to fix a director with responsibility (*Dovey v. Cory*, *supra*).

The Court.—See note to section 148.

Definitions.—"Accounts", "book and/or paper", "company", "the Court" (section 455 (1)).

148. Profit and loss account and balance sheet.—(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account or the income and expenditure account, as the case may be, is made up.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

NOTES

The section combines section 123 of the 1929 Act and section 20 of the 1947 Act. The last-mentioned section came into force on July 1, 1948.

Effect of changes.—(i) *Directors' report.*—Section 123 (2) of the 1929 Act made provision for the directors' report to be attached to the balance sheet. These provisions were amended by section 13 (7) of the 1947 Act, and are now contained in section 157, *post*. It is therefore not here reproduced. (ii) *Director's liability.*—A director may escape liability for failing to take reasonable steps to comply with the provisions of the section in the same conditions as in section 147, *ante*.

Profit and loss account; balance sheet.—For other provisions relating to accounts, see sections 149 to 153, 155 to 158, and the Eighth Schedule.

Incorporation.—See section 13. The period of eighteen months here mentioned corresponds with the period within which a company is required to hold its first annual general meeting (see section 131).

General meeting.—I.e., the annual general meeting (see section 131).

Profit and loss account and balance sheet.—See the next section and the Eighth Schedule.

Failure to take all reasonable steps to comply.—See the note to section 147 on directors' liability.

The Court dealing with the case.—The definition of "the Court" given in section 455 (1), *post*, is not here appropriate since the Court here referred to is the Court dealing with the case.

Definitions.—"Accounts", "company", "director", "the Court" (section 455 (1)).

149. General provisions as to contents and form of accounts.—

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in Part III of the said Eighth Schedule, the requirements of the last foregoing subsection and the said Eighth Schedule shall be without prejudice either to the general requirements of subsection (1) of this section or to any other requirements of this Act.

(4) The Board of Trade may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1) of this section) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) of this section shall not apply to a company's profit and loss account if—

(a) the company has subsidiaries ; and

(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts ; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds :

Provided that,—

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty ; and

(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires,—

- (a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given ; and
- (b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

NOTES

The section combines section 13 (1) to (6), (8) and section 20 of the 1947 Act. Those provisions came into force on July 1, 1948.

General note.—The section supersedes section 124 of the 1929 Act in making provision for the contents and form of a company's accounts. The requirements for such accounts are now contained in the Eighth Schedule, but the underlying principle is that, whatever form those accounts take, they *must* give a true and fair view of the state of the company's affairs at the end of its financial year and of its profit and loss for that year. While the Eighth Schedule lays down the broad principles on which the accounts must be based, provision is made for the modification of those requirements by permission of the Board of Trade in individual cases in order to adapt them to the circumstances of the company, so long as the overriding requirement is observed—namely, that the accounts shall give a true and fair view. Special provision is made elsewhere (see section 150) in the case of holding companies which have subsidiaries and present their accounts in the form of group accounts and such companies, provided they comply with the provisions of section 150, are exempted from the provisions of this section in the case of the profit and loss account. The penalties imposed on directors for failure to take reasonable steps to comply with the provisions as to accounts (see sections 147, 148, *ante*) are also imposed in the case of a similar failure with regard to the requirements of this section, and they may escape those penalties in the same circumstances.

Balance sheet ; profit and loss account ; true and fair view.—See section 148. The 1929 Act did not provide for the contents of the profit and loss account, and as to the balance sheet, the practice of accountants differed as to the method of presenting the information therein contained. The section is designed to give greater protection to the shareholders and to ensure better appreciation of the financial results as shown by the annual accounts. Particular features are that the accounts must disclose the prescribed information and must be such as are necessary to give a true and fair view. For forms of balance sheet and profit and loss account complying with this Act, see Magnus and Estrin on the Companies Act, 1947, Appendix A, Forms Nos. 3 and 4.

Requirements of the Eighth Schedule, so far as possible.—See the introductory paragraph to that Schedule, and generally, the notes there given.

Modification of requirements by the Board of Trade.—Modification is at the discretion of the Board of Trade so as to suit the needs of particular companies. The need may arise in practice, in that very many of these requirements may not prove to be equally suitable to all companies. It will be noted, however, that the Board's discretion may be exercised only on the application or with the consent of the directors. The provisions cannot be modified without their consent.

Company with subsidiaries.—See sections 150 to 154.

Directors' liability.—See note to section 147.

Other related provisions.—Sections 150, 151, 152 (holding company's accounts) ; section 155 (signed of balance sheet) ; section 156 (accounts and auditors' report to be annexed to balance sheet) ; section 157 (directors' report) ; section 158 (right of members, etc., to copy of the accounts) ; section 435 (application of certain provisions to unregistered companies) ; section 454 (power of the Board of Trade to alter forms, etc.).

Definitions.—"Accounts", "company", "director", "subsidiary" (section 154) ; "financial year" (section 455 (1)).

150. Obligation to lay group accounts before holding company.

—(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as "group accounts")

dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to the next following subsection, be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in the foregoing subsection—

(a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in Great Britain; and

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:

Provided that the approval of the Board of Trade shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

NOTES

The section combines sections 14 and 20 of the 1947 Act. Those sections came into force on July 1, 1948. The present section and the next two deal with group accounts, and the Act for the first time recognises that while in law holding companies and subsidiaries are separate entities, they are in practice, one organisation.

The effect of the section is that a holding company must present group accounts to the general meeting when its own balance sheet and profit and loss account are so laid (subsection (1)), and for any default, a director is liable to a penalty (subsection (3)). These requirements are relaxed or modified in certain cases, for instance, where the method of presenting information by a consolidated account would be misleading, harmful, etc. In such cases, the directors would be permitted to depart from the general rule provided the Board of Trade approve (subsection (2)). A wholly owned subsidiary is here defined (subsection (4)).

Group accounts.—The group accounts should, in general, be consolidated accounts comprising a consolidated balance sheet and consolidated profit and loss account (section 151 (1)) (but note also the permitted exceptions thereto (*ibid.* subsection (2))). Consolidated accounts (or similar information) must always give a true and fair view (section 152). As to the circumstances in which group accounts are not required, see subsection (2) of the present section, and the note next following.

Wholly owned subsidiary.—The requirements as to group accounts are obligatory, with certain exceptions, in all cases other than in the case of a company which is a wholly owned subsidiary of another body corporate (see subsection (4), *supra*). The reason for this exception is that consolidated accounts in the case of a wholly owned subsidiary would serve no useful purpose neither would there be any object in preparing them, since there would be no outside shareholders, and therefore, there is no question of concealing the activities of the subsidiaries.

When group accounts need not deal with a subsidiary.—If the directors think there is good reason why special dispensation should be granted in their case not to deal with a subsidiary's affairs in the group accounts, they will be permitted to depart from the general rule provided the Board of Trade approve. Where a subsidiary is left out of the group accounts under these provisions, certain other information must be given with regard to the subsidiary so omitted (see paragraph 15 (4), Part II of the Eighth Schedule).

Directors' liability.—See note to section 147.

Definitions.—"Holding company", "subsidiary" (section 154); "accounts", "company", "director" (section 455 (1)); "body corporate" (section 455 (3)).

151. Form of group accounts.—(1) Subject to the next following subsection, the group accounts laid before a holding company shall be consolidated accounts comprising—

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by the foregoing subsection, and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

NOTES

The section reproduces section 15 of the 1947 Act. That section came into force on July 1, 1948.

The effect of the section is that group accounts should normally be presented in the form of a consolidated balance sheet and consolidated profit and loss account (subsection (1)), but they may be presented in some other form provided the information given is similar and is so presented that it may be readily appreciated by the members (subsections (2), (3)), and the directors explain what is being done (see paragraph 15 (4) of Part II to the Eighth Schedule).

Consolidated accounts; consolidated balance sheet; consolidated profit and loss account.—The essence of consolidated accounts is that all the accounts of the company and those of its subsidiaries are brought into one, thereby showing the financial position of the combined business as a single undertaking. The effect thereof is to show (i) the resources of the group and the manner in which those resources are represented over the various types of assets; (ii) the aggregate liabilities; (iii) the

aggregate revenue surpluses or net deficit, as the case may be, so far as concern the holding company; (iv) the aggregate interest of outside shareholders in the share capital, reserves, and revenue balances. As to the profit and loss account, the effect of consolidation is to show (i) the aggregate results of the holding company and of those of the subsidiaries, so far as concern the holding company, and (ii) the results of the subsidiaries so far as they concern outside shareholders (i.e., shareholders other than the holding company or its subsidiaries). Accounting questions arising on consolidation deal with (i) the elimination of inter-company profits or losses, dividends, and balances on current account; (ii) elimination of inter-company shareholdings or debentures; (iii) regrouping or reclassifying and aggregating like classes of assets and liabilities; and (iv) evaluating or making the necessary adjustments to arrive at the amounts attributable to outside shareholders.

As to the contents of group accounts, see the next section and the Eighth Schedule. See further as to consolidated accounts, the notes to section 15 in Magnus and Estrin on the Companies Act, 1947.

Subsection (2).—The section allows the form of group accounts to be varied to suit the exigencies of different cases. The reason is obvious, since there are more methods than one of presenting information of the kind given by a consolidated balance sheet or consolidated profit and loss account. Those methods are in fact mentioned in this subsection, but it should be noted that no variation is allowed unless the two conditions (a) and (b) (*ibid.*) are satisfied.

Subsection (3) : Group accounts wholly or partly incorporated in company's own accounts.—The subsection amplifies the concession made to directors as to the form of group accounts, provided always, however, that full disclosure as required by the Act is made, and so long as a true and fair view is given (as to which, see the next section).

Definitions.—"Member" (section 26); "holding company", "subsidiary" (section 154); "accounts", "director" (section 455 (1)).

152. Contents of group accounts.—(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Board of Trade on the application or with the consent of the holding company's directors otherwise direct, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to subsection (1) of this section, the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto, and if not so prepared shall give the same or equivalent information :

Provided that the Board of Trade may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

NOTES

The section reproduces section 16 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that group accounts must give a true and fair view of the financial position and results of the group *as a whole*, so far as concern the members of the company (subsections (1), (3)). Generally, where the group accounts are prepared as consolidated accounts, they should comply with the requirements of the Eighth Schedule, but these requirements may be modified by the Board of Trade in certain cases (*ibid.*). In general, so that the group accounts may give a proper picture of the group as a whole, the financial year of the subsidiaries must be adjusted to coincide with that of the parent company, although this need not be done in certain cases (subsection (2)) (see further as to this, section 153).

Group Accounts.—See section 150.

True and fair view.—See in another connection, section 149.

Financial year . . . does not coincide.—See also section 153. See also paragraph 15 (6), Part II of the Eighth Schedule.

Board of Trade may modify requirements.—See section 454.

Definitions.—"Member" (section 26); "holding company", "subsidiary" (section 154); "accounts", "company", "director" (section 455 (1)).

153. Financial year of holding company and subsidiary.—(1) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the Board of Trade desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Board may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

NOTES

The section reproduces section 17 of the 1947 Act. That section came into force on July 1, 1948.

The effect of the section is that while there is a general obligation on the directors of a holding company to make the accounts of the subsidiaries coincide with its own financial year, they need not do so where there are good reasons against it (subsection (1)). The intention is that the accounting periods of the group of companies should coincide wherever practicable, but the requirement is relaxed in the case where there are practical difficulties in applying that rule, for instance, a change of accounting dates may result in increased tax liabilities, or again, allowance for time factor must be made for a company trading at home and abroad. In fact, there are many good reasons why the accounting periods of a group of companies should not be uniform. It should be noted that an explanation must be given for any deviation from normal requirements (see paragraph 15, Part II of the Eighth Schedule). The Board of Trade is given discretionary powers, in order to enable the financial year of the various companies to coincide, to waive the requirements of the Act, including, if necessary, the holding of the annual general meeting or the making of the annual return (subsection (2)).

Other related provisions.—Section 124 (annual return); section 131 (annual general meeting); section 148 (submission of accounts to general meeting); section 154 (meaning of holding company and subsidiary).

Definitions.—"Accounts", "company", "director", "financial year" (section 455 (1)).

154. Meaning of "holding company" and "subsidiary".—

(1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another if, but only if,—

(a) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of the foregoing subsection, the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid;
or

- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or
- (c) that the directorship is held by that other company itself or by a subsidiary of it.
- (3) In determining whether one company is a subsidiary of another—
 - (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
 - (b) subject to the two following paragraphs, any shares held or power exercisable—
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;
 shall be treated as held or exercisable by that other;
 - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;
 - (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in the last foregoing paragraph) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

NOTES

The section substantially reproduces section 18 of the 1947 Act. That section came into force for certain purposes on December 1, 1947, and the remainder came into force on July 1, 1948.

The effect of the section is that company "A" is a subsidiary of company "B" if *one* of the following conditions applies—(i) company "B" is *both* a member of company "A" *and* controls the composition of its board of directors; or (ii) company "B" holds more than half company "A's" equity share capital in nominal value; or (iii) company "A" is a subsidiary (i.e., by the fulfilment of conditions (i) or (ii) above) of any subsidiary of company "B". These provisions are, however, subject to the exceptions provided for in subsections (2) and (3), *supra*. As a corollary, a company is a holding company of another only when that other company fulfils the above conditions so as to make it a subsidiary of the first. It will be noted that a company may be the subsidiary of another even though it is not a company within the meaning of the Act (see subsection (5), *supra*).

The section replaces section 127 of the 1929 Act, which was repealed by the 1947 Act, Schedule IX, and the test of a subsidiary company there laid down does not now apply. The main effect of the new provision is that a subsidiary of a subsidiary is also covered. Under the 1929 Act this was not the case.

Subsection (1) : what constitutes a subsidiary.—The chief differences from the 1929 Act provisions to be noted are : (i) under paragraph (a) (i) of this subsection, the test is control of the board of directors and membership (and one share alone is sufficient to constitute membership) and not the number of shares held by the holding company or the voting power attaching to them. (ii) In paragraph (a) (ii), the test

is of a different kind, in that even if a holding company has not control of the composition of the board of directors, the relationship of holding company and subsidiary is established if the holding company holds more than half in nominal value of the subsidiary's share capital regardless of any other shares it may hold in that company. (iii) Sub-subsidiaries are included (paragraph (b)). For example (i) the capital of X and Y is held by H. The capital of Z is held by X and Y as to 50 per cent. each. Z is a subsidiary of H, but not of X and Y; (ii) the capital of S is 15,000 5 per cent. Cumulative Preference Shares of £1 each, and 5,000 Ordinary Shares of £1 each (the preference shares have no voting rights so long as the dividend on that class is paid, but on liquidation are entitled to be paid up all arrears of dividend and paid up preference capital in priority to the ordinary shares, but no further participation). H owns all the preference capital and dividends are paid up to date. In that case H is not a holding company and S is not its subsidiary since it holds less than half the equity capital, neither does it control the composition of the board of directors (under the 1929 Act, S was a subsidiary). If the preference capital, in the example given, carried one vote each, S under this Act would be a subsidiary because it would hold more than half the equity capital. It should be noted that in this example, the preference capital has been used as part of the equity capital, and the purpose is to show that "equity" is not necessarily solely the prerogative of "ordinary capital", but it is entirely a question of construction as to whether the circumstances of the case can be brought within the meaning of the definition of "equity" as herein laid down.

Subsection (3).—The tests referred to in subsection (1), *supra*, are subject to the provisions of this subsection. These provisions deal with shares held or a power exercisable by a company not strictly in the company's own right. Such shares or powers are not to be included in determining whether a company is the subsidiary of another.

Fiduciary capacity.—The word "fiduciary" in this sense means holding the shares or exercising the power in trust for another. Where a company holds shares not actually in its own right but on behalf of someone else interested therein so that in exercising its powers it is really in effect exercising them on behalf of that other person, such shares or power are disregarded for the purpose of ascertaining whether there is a subsidiary holding. For example, company A appoints B as its nominee for 1,000 shares in C company. A holds those shares on behalf of some other interested party and is therefore concerned in a fiduciary capacity only. Accordingly, although B holds as nominee for A, and A would therefore normally be regarded as exercising the power represented by those shares, it will not be so regarded for the purpose of determining whether C is a subsidiary of A, and, even if the 1,000 shares represent a controlling interest, C will not be regarded as a subsidiary of A.

Shares held under provisions of debentures.—The powers conferred by the debentures are purely temporary and are exercisable for a specific purpose for the benefit of the debenture holders and thus may also be said to be exercisable in a fiduciary capacity.

Definitions.—"Member" (section 26); "company", "debenture", "director", "share" (section 455 (1)); "body corporate" (section 455 (3)).

155. Signing of balance sheet.—(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

NOTES

The section corresponds with section 129 of the 1929 Act except for a minor amendment as to the persons liable for default introduced by section 105 (1), Schedule V, of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The provisions as to the attachment of the auditors' report to the balance sheet are now no longer contained in this section, but are dealt with in section 156. The

provisions as to the reading of the report and inspection thereof are also now replaced by the provisions of section 158. They are therefore not now reproduced here.

Balance sheet.—See section 148.

Directors.—See section 176.

Banking companies.—See also sections 429 to 433.

Secretary.—See section 177.

Circulated or published.—See section 158.

Definitions.—"Officer who is in default" (section 440 (2)); "company", "director", "officer" (section 455 (1)).

156. Accounts and auditors' report to be annexed to balance sheet.—(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

NOTES

The section combines section 129 (1), (3) of the 1929 Act and sections 21 (1), (2), 105 (1), Fifth Schedule of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

General note.—The profit and loss account, and the group accounts (if not already incorporated in the balance sheet or profit and loss account) must now be annexed to the balance sheet as well as the auditor's report (which was already required to be so attached by section 129 (1) of the 1929 Act) and must be approved by the directors before they sign the balance sheet (as to which, see section 155). The liability for default as to the matters set out in subsection (3) is imposed on any officer of the company concerned as well as the directors (under section 129 (3) of the 1929 Act, the liability in those cases was on the director who was in default). It will be noted that only the balance sheet need be signed by the directors and not the accounts to be annexed thereto.

Other related provisions.—Section 131 (general meetings); sections 148 to 151, Eighth Schedule (accounts provisions generally); section 158 (circularisation of accounts, etc.); and section 162 (auditors' report).

Definitions.—"Officer who is in default" (section 440 (2)); "accounts", "company", "officer" (section 455 (1)).

157. Directors' report to be attached to balance sheet.—(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of the Eighth Schedule to this Act.

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of subsection (1) of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

- (a) in any proceedings against a person in respect of an offence under the said subsection (1), it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and
- (b) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

NOTES

The section combines section 123 (2), (3) of the 1929 Act and sections 13 (7), 19, 20 of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

General note.—The changes to note are that the Act places a particular meaning on the word “reserves” (as to which, see Part IV of the Eighth Schedule), and where that expression is used in the accounts of a company, it must be used in the sense there given. The requirement as to the directors’ report being attached to the balance sheet is the same as under the 1929 Act. A further requirement now introduced for the first time is that the directors’ report must deal with any change in the company’s business or that of its subsidiaries so far as it is material for the appreciation by the members of the company’s affairs. The directors, however, have a discretion as to what they disclose and they need not disclose any information which in their opinion might be harmful to the company’s business. The directors are liable to penalties for any default in these provisions in certain conditions (subsection (3)).

Change in company’s business.—Section 123 (2) of the 1929 Act required the report to be made merely “with respect to the state of the company’s affairs”. Material changes in business must now be dealt with. The change must be one which is material for the appreciation by the members of the state of the company’s affairs. Materiality would, of course, be a question of fact in each case, and would be a matter of discretion for the directors. An improper exercise of such discretion would probably be interpreted as a default and incur the penalties laid down in subsection (3). It might also entitle a member to apply to the Court under section 210, or, with the necessary support, to procure an investigation by the Board of Trade under section 164, or, in a proper case, might petition for winding-up on the ground that it was just and equitable that the company be wound up (see section 222).

Directors’ liability.—See note to section 147.

Definitions.—“Member” (section 26); “subsidiary” (section 154); “company”, “director”, “financial year” (section 455 (1)).

158. Right to receive copies of balance sheets and auditors’ report.—(1) A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with a copy of the auditors’ report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled:

Provided that—

- (a) in the case of a company not having a share capital this subsection shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;
- (b) this subsection shall not require a copy of those documents to be sent—
 - (i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;
 - (ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices;

or

- (iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and
- (c) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Any member of a company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, whether he is or is not so entitled, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

(3) If default is made in complying with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, when any person makes a demand for any document with which he is by virtue of subsection (2) of this section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) The foregoing provisions of this section shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act, and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not passed.

NOTES

The section combines section 130 (1), (2) of the 1929 Act and sections 2 (4), (5), 21 (3), (4), 105 (1) and the Fifth Schedule to the 1947 Act. The last-mentioned provisions of the 1947 Act came into force on July 1, 1948.

Effect of changes.—The section effects substantial amendments to the 1929 Act. The new provisions apply to all companies (subsections (1), (4)), except in the case of a company not having a share capital (see subsection 1 (a)) and a private company in respect of a balance sheet laid before the company before the commencement of the Act. It will be noted, therefore, that, from the date of the commencement of the Act, a private company is no longer exempt from this provision. The major change to note under subsection (1) is that every member and every debenture holder is now entitled to receive a copy of the annual accounts, etc., without having to ask for them, except in the cases mentioned in provisos (a) and (b) to subsection (1), *supra*. The period during which such documents have to be sent to the persons so entitled (which may also include persons who are not members or debenture holders) is twenty-one days (instead of seven days as hitherto) before the general meeting at which they are to be considered (this period corresponds with the length of notice required under section 133), but it should be noted that the number of days necessary for the circulation of those documents can be waived if all the members "entitled to attend and vote", so agree (subsection (1) (c)) (see also section 133). The provisions of section 130 (1) (b) of the 1929 Act (so far as they deal with the rights of persons to be furnished on demand without charge to a copy of the accounts) are reproduced in subsection (2) of the present section. Subsection (3) effects certain amendments to section 130 (1) of the 1929 Act for the specific offence there stated, the general purpose of which is to extend the liability in those cases from directors to any officer of the company concerned who is in default.

Balance sheet.—See section 148.

Documents required by law to be annexed to balance sheet.—See sections 156, 157, *ante*, 165, *post*.

Debenture holders.—See sections 86 *et seq*.

Persons other than members entitled to notice of meetings.—E.g., personal representatives or a trustee in bankruptcy of a member (see Table A, Part I, article 133).

Definitions.—"Member" (section 26); "private company" (section 28); "default fine", "officer who is in default" (section 440); "company", "debenture", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

159. Appointment and remuneration of auditors.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless—

- (a) he is not qualified for reappointment; or
- (b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or
- (c) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Board of Trade may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Board's power under the last foregoing subsection becoming exercisable, give them notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that—

- (a) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and
- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company—

- (a) in the case of an auditor appointed by the directors or by the Board of Trade, may be fixed by the directors or by the Board, as the case may be;
- (b) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

NOTES

The section combines section 132 (1), (4), (5) of the 1929 Act and sections 2 (4), 24 (1), (2), (6), (7), (8) of the 1947 Act. The last-mentioned provisions of the 1947 Act came into force on July 1, 1948.

Effect of changes.—The period of office of an auditor is now defined. He commences to act after the meeting appointing him and remains in office until the conclusion of the next annual general meeting (subsection (1)). The provision in the 1929 Act that a retiring auditor's appointment was effective only if sanctioned by a resolution of the company is superseded by the new procedure laid down in subsection (2) of the present section, which in effect provides that a retiring auditor is automatically reappointed if no action is taken to appoint someone else or if otherwise the conditions there stated apply. It should also be noted that the Board of Trade have power to appoint an auditor in certain conditions (subsection (3)), and this applies whether they receive an application from a member for that purpose or not. If no auditor was appointed at the annual general meeting, the company must give notice of that fact to the Board of Trade within one week from the date of that meeting (subsection (4)). Auditors appointed by the directors before the first annual general meeting will hold office until the conclusion of that meeting (formerly they held office until that meeting), but any member of the company may give notice in the manner provided for by the section that the first auditors so appointed shall not be re-elected at the next annual general meeting, and the powers of the directors to appoint first auditors are limited in certain conditions. The notice of a proposal to appoint other auditors in place of a company's first auditors is fourteen days (formerly seven days) (subsection (5)). The directors' power to fill any casual vacancy in the office of auditor remains undisturbed (subsection (6)). Since in certain conditions a company's auditors may be appointed by (i) the Board of Trade (see subsection (3), *supra*), or (ii) the directors (subsections (5), (6), *supra*), the section permits that the fees payable to the auditors be fixed by the Board of Trade or by the directors, as the case may be. In all other cases the remuneration must be fixed by the company in general meeting (subsection (7)).

Annual general meeting.—See section 131.

Retiring auditor . . . however appointed.—The words "however appointed" would appear to refer to an appointment made other than at an annual general meeting, see e.g., subsections (3), (5), (6), *supra*.

Not qualified for reappointment.—See section 161.

Resolution has been passed.—Anybody wishing to put forward such a resolution must give twenty-eight days' notice as required in section 160.

Unwillingness to be reappointed.—The point to be borne in mind by an auditor who does not wish to be reappointed is that unless the directors have adequate notice, they may not have time to table a motion to appoint someone else (but see subsection (3), *supra*, which deals with the power of the Board of Trade to appoint an auditor).

Other related provisions.—Section 160 (rights of auditors if not reappointed); section 161 (disqualification for appointment as auditor); section 162 (auditors' report).

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "company", "director" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

160. Provisions as to resolutions relating to appointment and removal of auditors.—(1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) The last foregoing subsection shall apply to a resolution to remove the first auditors by virtue of subsection (5) of the last foregoing section as it applies in relation to a resolution that a retiring auditor shall not be re-appointed.

NOTES

The section corresponds with section 24 (3) to (5), (7) of the 1947 Act, which came into force on July 1, 1948.

Effect of changes.—The section should be read with section 159. It will there be noted that the appointment of an auditor is not exclusively in the hands of the members (*ibid.* subsections (3), (5) and (6)), and that a person *other* than the retiring auditor may only be appointed, and a retiring auditor will not be reappointed, if a resolution to that effect is passed (*ibid.*, subsection (2) (b)). The present section deals with the special notice required for that purpose. It should be noted that the words "providing expressly . . . shall not be reappointed" would mean that a negative resolution (of which special notice is also required) may be put forward (the effect of which is that no one else has been nominated to take the place of the retiring auditor). In that event the result might be that no auditor was appointed to act after that meeting. In such circumstances, the directors would have to invoke the provisions of section 159 (3), (4). Where notice is given to a retiring auditor as herein provided, the auditor concerned is entitled to receive a copy of that notice (subsections (1), (2)). Subsection (3) proceeds on the idea that it is the retiring auditors' right, if a proposal has been made not to reappoint him, to put his views orally at the meeting, and/or in writing prior to the meeting to be there read out, and it is the duty of the company to notify the members in the manner indicated in the subsection. A retiring auditor cannot take advantage of these provisions to disseminate defamatory matter, and if the Court is of opinion that this is being attempted, it can absolve the company from the requirements of the subsection (*ibid.*). The application to the court is by summons (R.S.C., Order 53B, r. 8 (u)). If the auditors appointed under section 159 (5) are not re-elected at the first annual general meeting, they have the same rights as auditors appointed by the company in general meeting as regards any resolution put forward to remove them (subsection (4)).

Special notice.—See section 142.

Annual general meeting.—Section 131.

Retiring auditors.—I.e., first auditors appointed by the directors; auditors appointed by the Board of Trade; auditors appointed by the company (see section 159). As to the position where an auditor is not qualified for reappointment, or is unwilling to accept, see also *ibid.*, subsection (2).

Defamatory matter.—Cf. section 140 (5).

Definitions.—"Member" (section 26); "company", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

161. Disqualifications for appointment as auditor.—(1) A person shall not be qualified for appointment as auditor of a company unless either—

- (a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Board of Trade; or

- (b) he is for the time being authorised by the Board of Trade to be so appointed either as having similar qualifications obtained outside the United Kingdom or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of the foregoing paragraph or as having before the sixth day of August, nineteen hundred and forty-seven, practised in Great Britain as an accountant :

Provided that this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

- (a) an officer or servant of the company ;
- (b) a person who is a partner of or in the employment of an officer or servant of the company ;
- (c) a body corporate :

Provided that paragraph (b) of this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the last foregoing subsection, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) Notwithstanding anything in the foregoing provisions of this section, a Scottish firm shall be qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditor thereof.

(5) Any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

NOTES

The section combines section 133 (1), (2) of the 1929 Act, and section 23 of the 1947 Act, with a minor amendment effected by section 122 (4) and Seventh Schedule, paragraph 1 (f) to the 1947 Act. The last-mentioned provisions of the 1947 Act came into force on July 1, 1948.

Effect of changes.—The section does not allow the appointment as auditors of persons without the qualifications set out in subsection (1), except in the case of an exempt private company. These requirements are additional to those of subsection (2) which disqualify a partner or an employee of an officer or any servant of the company from acting as auditor, and these provisions apply to a private company as well as a public company but not to an exempt private company. If a person is ineligible for appointment as an auditor, he is ineligible for appointment as such to any company which is a member of the same group (subsection (3)). If any partner in a Scottish firm is, for any reason, disqualified for appointment as auditor, the firm itself, as a firm, cannot be so appointed (subsection (4)).

Member of a body of accountants recognised by Board of Trade.—The following bodies of accountants established in the United Kingdom have been recognised (see Press Notice issued by the Board of Trade and dated June 25, 1948)—the Institute of Chartered Accountants in England and Wales ; the Society of Incorporated Accountants and Auditors ; the Association of Certified and Corporate Accountants ; the Society of Accountants in Edinburgh ; the Institute of Accountants and Actuaries in Glasgow ; the Society of Accountants in Aberdeen ; and the Institute of Chartered Accountants in Ireland.

Having similar qualifications obtained outside the United Kingdom.—This provision allows accountants with adequate qualifications obtained abroad to act as auditors if authorised by the Board of Trade. It should be noted that there is an important distinction between paragraphs (a) and (b). In the case of paragraph (a), once a body has been designated by the Board of Trade as a recognised body, every member of such body is automatically qualified to act as auditor. In the case of paragraph (b), the individual possessing the relevant qualifications must be individually authorised by the Board of Trade.

Practised in Great Britain.—This is another of the provisions which allow a person who is not a member of a body of accountants, etc., to act as an auditor. It is believed that a Bill for the registration of accountants will be shortly introduced before Parliament. This Bill purports to give accountancy qualifications statutory recognition and protection.

Shall not apply . . . to an exempt private company.—The section allows in the case of exempt private companies the appointment of auditors who are not qualified within the meaning of subsection (1), *supra*. As to "exempt private company" see 129 (4).

Officer or servant of the company.—The term "servant" is discussed in another connection in section 319, which see, with the notes thereto.

Scottish firm.—In English law, a partnership is not a legal *persona* (see Partnership Act, 1890, section 4 (2); 12 Halsbury's Statutes 532). In Scottish law, however, a partnership is a separate legal entity. It is possible, therefore, for a Scottish firm, like a company, to be appointed auditor if otherwise qualified. If any partner is, however, for any reason disqualified for appointment as auditor, the firm itself, as a firm, cannot be so appointed.

Definitions.—"Private company" (section 28); "exempt private company" (sections 129, 455 (1)); "holding company", "subsidiary" (section 154); "company", "officer" (section 455 (1)); "body corporate" (section 455 (3)).

162. Auditors' report and right of access to books and to attend and be heard at general meetings.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Ninth Schedule to this Act.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

(3) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

NOTES

The section combines sections 129 (1), 134 (1), (2) of the 1929 Act and sections 22 (1), (2) of the 1947 Act, with a minor amendment effected by section 122 (4) and the Seventh Schedule (1) (i) to the 1947 Act. The last-mentioned provisions of the 1947 Act came into force on July 1, 1948.

Effect of changes.—Auditors must now report on the profit and loss account and all group accounts and the report must include the matters set out in the Ninth Schedule (subsection (1)). The provisions of section 129 (1) of the 1929 Act as to the auditor's report being read to the company in general meeting and the right of members to inspect the same remain undisturbed as is also the auditors' right of access to the books (corresponding with section 134 (2) of the 1929 Act), but in relation to an auditor's duties while on audit, it is now provided that it will be for him to judge what is necessary for that purpose (subsection (3)). Subsection (3) marks a departure from the principle under the 1929 Act (i.e., 134 (3)) that auditors were only entitled to attend meetings of the company at which the accounts were to be considered. Auditors are now given the right to attend any general meeting (and to receive notice thereof) and to make any statement at that meeting on that part of the business which concerns them as auditors (subsection (4)).

Report to the members.—I.e., arising out of the audit. The auditors' report is the medium by which an auditor carries out his duty to those whom he is appointed to represent. It is, of course, the duty of an auditor to report on all matters of which he considers the members should be informed, and in particular, his report must contain the matters specified in the Ninth Schedule (see also *Re London and General Bank* (No. 2), [1895] 2 Ch. 673, C.A.; 9 Digest 555, 3665 (auditor's duty to convey information in direct terms and not merely arouse suspicion)). Except in special cases, it is the duty of the auditor to place before the members the necessary information

as to the true financial position and not merely indicate the means of acquiring that information (*Re City Equitable Fire Insurance Co., Ltd.*, [1925] Ch. 407, C.A. ; Digest Supp.). If the auditor does not discharge his duty, and as a result, acts are done by which the company suffers damage, he is liable (*Leeds Estate Building and Investment Co. v. Shepherd* (1887), 36 Ch.D. 787 ; 9 Digest 555, 3668). *Semble*, the onus is on the auditor to show that the damage is not the result of any breach of duty on his part (*Re Bolivia Republic Exploration Syndicate, Ltd.*, [1914] 1 Ch. 139 ; 9 Digest 180, 1140), but the auditor is not bound to be a detective. He is a "watch-dog not a bloodhound" (*Re Kingston Cotton Mill Co. (No. 2)*, [1896] 2 Ch. 279, C.A. ; 9 Digest 554, 3661). See also 5 Halsbury's Laws (2nd Edn.) 385, 386 ; Magnus and Estrin on the Companies Act, 1947, notes to section 22.

The essence of an audit is that an independent person representing the shareholders satisfies himself through an examination of the books and accounts of the company that the directors and officers of that company have properly carried out their duty as required by the Act in regard to the accounts and to report on his findings in accordance with law.

Heard at any general meeting which they attend.—*Quare* whether a statement sent in writing by the auditors to a meeting at which they are not present can validly be received by the meeting. As to the right of a retiring auditor to make written representations to a general meeting against a resolution for his supersession, see section 160.

Business which concerns them as auditors.—Included among matters which would concern them would presumably be the following : (i) their report (*supra*) ; (ii) section 438 (false statements) ; subsection (3), *supra* (access to books, etc.) ; sections 159, 160 (appointment, remuneration and removal of auditors).

Balance sheet, profit and loss account, group accounts.—See generally, 149 to 158.

General meeting.—See section 131.

Notices convening meetings.—See section 133. The provisions of subsection (4) mark a departure from the principle that notices of general meetings, in general, should be sent to members of the company only. An auditor now has the same right as any member to receive all notices relating to any general meeting of the company.

Other related provisions.—Section 196 (8) (particulars in accounts of directors' remuneration).

Definitions.—"Member" (section 26) ; "accounts", "book", "officer" (section 455 (1)).

163. Construction of references to documents annexed to accounts.—References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report :

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

NOTES

The section corresponds with section 25 of the 1947 Act, which came into force on July 1, 1948.

Effect of section.—The section makes it clear that the auditor is not required to include in his own report any comment on the directors' report unless it contains information which is otherwise required to be given in a statement annexed to the accounts. The section permits such information to be given in the directors' report instead of in the accounts, but the report must then be annexed to the accounts and the auditor must then report thereon so far as it gives that information.

Other related provisions.—Section 149 (7) (balance sheet to include notes, etc., giving information required by the Act ; sections 148, 149, 150, 151 (accounts provisions, generally) ; section 156 (auditors' report) ; section 157 (directors' report).

Definitions.—"Accounts", "company", "director" (section 455 (1)).

Inspection

164. Investigation of company's affairs on application of members.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct—

- (a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one tenth of the shares issued ;
- (b) in the case of a company not having a share capital, on the application of not less than one fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the investigation.

NOTES

The section combines section 135 (1), (2) of the 1929 Act and section 42 (1) of the 1947 Act. The last-mentioned provision came into force on December 1, 1947.

Effect of changes.—Banking companies having a share capital are placed in the same position as other companies having a share capital, and, in all such cases, apart from the provision of the 1929 Act that the applicant must hold not less than one-tenth of the shares issued, the application may be made by any 200 members, even though they hold between them less than one-tenth of the shares issued. The position of a company not having a share capital is left undisturbed. The motives of the applicants in asking for the appointment of an inspector are no longer to be taken into account.

Appointment of inspectors by Board of Trade.—The powers of the Board will not be interfered with by the Court by prohibition (*Re Grosvenor and West-End Railway Terminus Hotel Co., Ltd.* (1897), 76 L.T. 337, C.A. ; 9 Digest 587, 3933).

Register of members.—See section 110.

Definitions.—"Member" (section 26) ; "company", "share" (section 455 (1)) ; "person" (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001).

165. Investigation of company's affairs in other cases.—Without prejudice to their powers under the last foregoing section, the Board of Trade—

- (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct, if—
 - (i) the company by special resolution ; or
 - (ii) the court by order ;
 declares that its affairs ought to be investigated by an inspector appointed by the Board ; and
- (b) may do so if it appears to the Board that there are circumstances suggesting—
 - (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose ; or
 - (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or toward its members ; or
 - (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

NOTES

The section substantially reproduces section 43 (1) of the 1947 Act, which came into force on December 1, 1947.

General note.—Section 164 dealt with the appointment of inspectors by the Board of Trade on the application of members of a company. The present section

requires the Board to appoint inspectors (i) when the company itself resolves by special resolution that its affairs ought to be investigated; or (ii) when the Court so orders. The Board is further empowered to appoint inspectors itself in the circumstances set out in paragraph (b), *supra*. It will be noted that an inspector must be appointed where the company so resolves by special resolution (paragraph (a) (i), *supra*). Section 137 of the 1929 Act empowered a company itself to appoint an inspector by special resolution. This may no longer be done and section 137 of that Act was repealed, except in regard to appointments made before the operation of section 43 of the 1947 Act, by subsection (4) of the latter section. It is therefore not reproduced in this Act. It will also be noted that the powers conferred on the Board of Trade by this section are additional to those conferred on them by section 164.

Shall appoint.—This provision is mandatory. If the company passes a special resolution to that effect or the Court so orders, the Board must appoint inspectors to investigate the affairs of the company. The provisions under section 164, on the other hand, are discretionary, cf. also the wording of paragraph (b), *supra*, where the Board may, in its own discretion, appoint inspectors in the circumstances there stated.

The Court by order.—The circumstances in which the Court would make such an order are not here indicated. Presumably, the Court would make such an order whenever the question of the conduct of the affairs of the company came before it. The application is by motion, R.S.C., Order 53B, r. 7 (c); S.I. 1948 No. 1756.

Business conducted with intent to defraud creditors.—Cf. section 332.

Fraudulent purpose.—As to what constitutes a “fraudulent purpose”, see *Re Leitch (William C.) Brothers, Ltd.*, [1932] 2 Ch. 71; Digest Supp.; *Re Patrick and Lyon, Ltd.*, [1933] Ch. 786; Digest Supp. A company formed for a fraudulent or unlawful purpose may be wound up (*Re Brinsmead (Thomas Edward) & Sons*, [1897] 1 Ch 406, C.A.; 10 Digest 825, 5379).

Manner oppressive of any part of its members.—See section 210.

Definitions.—“Member” (section 26); “special resolution” (section 141); “company”, the Court (section 455 (1)).

166. Power of inspectors to carry investigation into affairs of related companies.—If an inspector appointed under either of the two last foregoing sections to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

NOTES

The section combines sections 42 (5) and 43 (2) of the 1947 Act, which came into force on December 1, 1947.

The effect of the section is that the investigation of an inspector appointed under either section 164 of 165 is not now limited to the company whose affairs he was appointed to investigate, but may embrace an investigation of the affairs of any other company which is, or was at any relevant time, a member of the same group. The inspector's report must contain a report on the result of the investigation of such associated companies so far as it is relevant to the main investigation.

Investigation of affairs of another body corporate.—One of the obstacles to an effective investigation was the inability of the inspector, under the 1929 Act, to inquire into the affairs of subsidiary companies where it was necessary to do so in pursuance of the investigation which he had been appointed to undertake. This obstacle has now been removed. The powers of investigation are not limited to companies which, at the time of the investigation are in the same group, but extend to any company which, at the time of the transactions which are being investigated or at any other time relevant to the investigation, was a member of it.

Inspector's report.—See section 168. The report on such other company, it will be noted, is required only so far as it is relevant to the main investigation. It is not necessary that all the affairs of the other company should be investigated, if a partial investigation will suffice to throw the necessary light on the main investigation and only so much thereof is required to be reported on.

Definitions.—“Holding company”, “subsidiary” (section 154); “company” (section 455 (1)); “body corporate” (section 455 (3)).

167. Production of documents, and evidence, on investigation.

—(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of the last foregoing section to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

-(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

- (a) the inspector may take part therein either personally or by solicitor or counsel ;
- (b) the court may put such questions to the person examined as the court thinks fit ;
- (c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him ;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him :

Provided that, notwithstanding anything in paragraph (c) of this subsection, the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression “agents”, in relation to a company or other body corporate shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

NOTES

The section combines section 135 (3) to (5) of the 1929 Act and sections 42 (2) to (4) and (6) and 43 (2) of the 1947 Act. The last-mentioned provisions came into force on December 1, 1947.

The section imposes a duty on all officers and agents of any company whose affairs are being investigated to produce all books and papers in their custody or power and to give all the assistance they can to the inspector who may examine them on oath and procure the examination on oath by the Court of any other person.

Effect of changes.—(i) *Extension of scope of section.* The powers conferred and the duties imposed by the section are extended to all investigations ordered by the Board of Trade, whether under sections 164 or 165, and to the investigation of the affairs of any other body corporate under section 166. (ii) *Officers and agents.* The duty of officers and agents is not only to produce the books and documents in their custody and power, but also to give the inspectors all other reasonable assistance. The duty is placed not only on the officers and agents of the company whose affairs are being investigated but also on those of any other body corporate whose affairs are incidentally being investigated under section 166. (iii) *Examination on oath.* Apart from the powers which the inspector already had under the 1929 Act to examine on oath officers and agents (a power now extended in regard to officers and agents of other bodies corporate under section 166), the inspector may now apply to the Court for the examination on oath of any other person. A definition of "officer or agent" is now included in this section (subsection (5), *supra*).

All reasonable assistance.—This provision enlarges considerably the duty placed upon officers and agents by section 135 (3) of the 1929 Act. Under that section, the duty of such officers or agents was discharged when they produced to the inspector such books and documents as were in their custody and power. Valuable information might be in their possession which does not appear in the books and documents. It is true that under subsection (2), *supra*, the inspector has power to examine them on oath in relation to the company's business, but such power would only enable the inspector to receive answers to such questions as he might put. It puts no duty upon such officers or agents to volunteer information which is not elicited on such examination. The present provision now places a positive duty upon them to give active assistance to the inspector in connection with the investigation so far as they are reasonably able to give it and not merely to perform the passive function imposed upon them by the 1929 Act.

Subsection (3).—The application to the Court for an order is by motion under R.S.C., Order 53B, rule 7 (d); S.I. 1948 No. 1756.

Subsection (4).—**Examination of other persons.**—It would appear from the nature of the procedure here detailed that it will be conducted before a Master or Registrar. It is obviously intended to be in chambers, since the person examined may be represented by solicitor as well as by counsel, while the inspector may take part either in person or by solicitor or by counsel. The application to the court for the order is by summons, R.S.C., Order 54B, r. 8 (p); S.I. 1948 No. 1756.

Used in evidence against him.—The wording of this provision is rather curious. It would appear that a person cannot, on such application, refuse to answer a question which would tend to criminate him, nor does it appear that any caution need be administered. If this is the case, it marks a departure from the usual rules of evidence. Nevertheless, this seems to be a fair interpretation to place upon this provision. If criminal or other proceedings do follow as a result of the examination, the notes of the examination will be admissible evidence, and it is probably correct to say that it would be admissible evidence either for or against him.

Expenses of investigation.—See section 170.

Definitions.—"Agent", "books", "company", "document", "the Court" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

168. Inspectors' report.—(1) The inspectors may, and, if so directed by the Board of Trade, shall, make interim reports to the Board, and on the conclusion of the investigation shall make a final report to the Board.

Any such report shall be written or printed, as the Board direct.

(2) The Board of Trade shall—

- (a) forward a copy of any report made by the inspectors to the registered office of the company;
- (b) if the Board think fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section one hundred and sixty-six of this Act or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Board to be affected;
- (c) where the inspectors are appointed under section one hundred and sixty-four of this Act, furnish, at the request of the applicants for the investigation, a copy to them; and

- (d) where the inspectors are appointed under section one hundred and sixty-five of this Act in pursuance of an order of the court, furnish a copy to the court; and may also cause the report to be printed and published.

NOTES

The section combines section 135 (6) of the 1929 Act and sections 42 (7), (8) and 43 (2), (3) of the 1947 Act. The last-mentioned provisions came into force on December 1, 1947.

The section provides for reports by inspectors appointed under sections 164 and 165.

Effect of changes.—(i) *Interim reports.* As well as the final report which the inspector was already bound to make under the 1929 Act, interim reports may be made by the inspector, who must make such reports if so directed by the Board of Trade. The provisions of the section apply to interim as well as final reports. (ii) *Copies.* A copy of any report made by the inspector must be produced to the company, and, on request, to the applicants for the investigation. It must now also be produced to the Court, where the investigation is undertaken under an order of the Court, and may be sent, on request and on payment of the prescribed fee, to any member or creditor of any company whose affairs have been investigated and the Board may also have the report printed and published.

Registered office.—See section 107.

Definitions.—"Member" (section 26); "company", "prescribed", "the Court" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

169. Proceedings on inspectors' report.—(1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section one hundred and sixty-six of this Act, been guilty of any offence for which he is criminally liable, the Board shall proceed as follows:—

- (a) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;
- (b) in the case of an offence in Scotland, the Board shall refer the matter to the Lord Advocate.

(2) If, where any matter is referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.

Subsection (5) of section one hundred and sixty-seven of this Act shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Board of Trade, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph (b) of section one hundred and sixty-five of this Act, the Board may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section two hundred and ten of this Act or both.

(4) If from any such report as aforesaid it appears to the Board of Trade that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its

affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, they may themselves bring proceedings for that purpose in the name of the body corporate.

(5) The Board of Trade shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of the last foregoing subsection.

NOTES

The section combines section 136 (1) (2) of the 1929 Act and sections 42 (6) (8), 43 (2) and 44 of the 1947 Act. The last-mentioned provisions came into force on December 1, 1947.

Effect of changes.—(i) *Application of section.* The proceedings here referred to may arise out of any reports submitted by the inspector, whether interim or final, and whether the investigation is undertaken under section 164 or 165. They may be instituted in respect of an offence, not only in relation to the company whose affairs are the subject of the main investigation, but also in relation to the affairs of another body corporate which are being investigated under section 166. (ii) *Prosecutions.* If the Director of Public Prosecutions decides that a prosecution ought to be instituted, he need no longer consider whether it is desirable in the public interest that the proceedings in the prosecution should be conducted by him. He is required to institute the proceedings. (iii) *Winding-up.* In a proper case, the Board of Trade may, as a result of the inspector's report, itself present a petition for the winding-up of any body corporate whose affairs have been investigated (provided it is one which is liable to be wound up under the Act) on the grounds that it is just and equitable to do so or for an order under section 210 or both, unless the company is already being wound up by the Court. (iv) *Proceedings in name of company.* In the case of any body corporate dealt with in the report, the Board may, in the name of that body corporate, bring any proceedings for fraud, etc., it thinks ought, in the public interest, to be brought by it and must indemnify that body corporate against any costs or expenses incurred in connection with such proceedings.

Subsection (3) : Body corporate liable to be wound up.—As to companies liable to be wound up under the Act, see sections 218, 220, and Parts VII to X, and generally 5 Halsbury's Laws (2nd Edn.), pp. 542, 543. A company registered in Scotland cannot be wound up in England even if it has a branch office in England. (*Re Scottish Joint Stock Trust*, [1900] W.N. 114 ; 10 Digest 1208, 8552.)

Circumstances referred to in section 165 (b) (i) or (ii).—It should be noted that the power of the Board of Trade to present a petition under this section is limited to the cases there set out. If none of these circumstances is present, the Board may not present a petition under this section, even though it appears from the inspector's report that it is just and equitable that the company be wound up.

Just and equitable.—See section 222.

Subsection (4) : Proceedings for damages by Board.—The power to bring such proceedings is not limited only to proceedings on behalf of the company whose affairs are being investigated. Where the inspector exercises his powers under section 166 to investigate the affairs of another body corporate in the same group, proceedings under this subsection may be brought by the Board in the name of such body corporate where the public interest so demands.

Definitions.—"Officer or agent" (section 167 (5)); "agent", "company", "officer", "the Court" (section 455 (1)); "body corporate" (section 455 (3)).

170. Expenses of investigation of company's affairs.—(1) The expenses of and incidental to an investigation by an inspector appointed by the Board of Trade under the foregoing provisions of this Act shall be defrayed in the first instance by the Board of Trade, but the following persons shall, to the extent mentioned, be liable to repay the Board :—

- (a) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (4) of the last foregoing section, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order ;
- (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings ; and

(c) unless as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or by or on behalf of the Lord Advocate—

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Board's own motion, shall be liable, except so far as the Board otherwise direct; and

(ii) the applicants for the investigation, where the inspector was appointed under section one hundred and sixty-four of this Act, shall be liable to such extent (if any) as the Board may direct;

and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Board of Trade's own motion may, if he thinks fit, and shall, if the Board so direct, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under paragraph (c) of the foregoing subsection.

(3) For the purposes of this section, any costs or expenses incurred by the Board of Trade in or in connection with proceedings brought by virtue of subsection (4) of the last foregoing section (including expenses incurred by virtue of subsection (5) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Board of Trade imposed by paragraphs (a) and (b) of subsection (1) of this section shall, subject to satisfaction of the Board's right to repayment, be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by the said paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (b); and any person liable under the said paragraph (a) or (b) or either sub-paragraph of the said paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses to be defrayed by the Board of Trade under this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament, but subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding up of companies in England) shall have effect as if the said expenses were expenses incurred by the Board under this Act in relation to the winding up of companies in England.

NOTES

The section substantially reproduces section 45 of the 1947 Act, which came into force on December 1, 1947.

General note.—Provision is made by the section for the payment of the expenses of any investigation instituted by the Board of Trade under the foregoing sections. In the first instance, such expenses are to be defrayed by the Board of Trade, but, in the circumstances here specified, the Board may recover such expenses or a contribution thereto. Provision is also made in subsection (4) for contribution between the persons who might be liable under subsection (1). So far as the expenses to be defrayed by the Board are not recovered from other persons as above, they are to be met out of moneys provided by Parliament or out of the Bankruptcy and Companies Winding up (Fees) Account under the Economy (Miscellaneous Provisions) Act, 1926, section 13 (3) (1 Halsbury's Statutes 719) as if they were expenses incurred in a winding-up.

Definitions.—"Company" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

171. Inspectors' report to be evidence.—A copy of any report of any inspectors appointed under the foregoing provisions of this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

NOTES

The section combines section 138 of the 1929 Act and sections 42 (8) and 43 (2) of the 1947 Act. The last-mentioned provisions came into force on December 1, 1947.

Company's seal.—See section 108 (1) (b) and the First Schedule, Table A, Part I, article 113.

Inspector's report.—See section 168.

172. Appointment and powers of inspectors to investigate ownership of company.—(1) Where it appears to the Board of Trade that there is good reason so to do, they may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Board of Trade by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section one hundred and sixty-four of this Act, the Board of Trade shall appoint an inspector to conduct the investigation unless they are satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Board of Trade are satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections one hundred and sixty-six to one hundred and sixty-eight of this Act, shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

- (a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

- (b) the Board of Trade shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if they are of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which they are not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Board of Trade out of moneys provided by Parliament.

NOTES

The section reproduces section 46 of the 1947 Act, which came into force on December 1, 1947.

General note.—The preceding sections (sections 164–171) dealt with the appointment of an inspector to investigate the affairs of a company. This and the next two sections provide for the investigation of the ownership and control of a company and confer wide powers on the Board of Trade to investigate nominee holdings where it thinks fit to do so. The present section enables the Board, where they think there is good reason, to appoint inspectors to investigate and report on the membership of a company or any other matter relating to the company in order to determine its true ownership and must do so on the application of members of the company, unless satisfied that the application is vexatious. The scope of such an investigation may be general or it may be limited to a particular aspect or aspects or to a particular period, and may particularly be limited to the investigation of particular shares or debentures. Where the application is made by members of the company, the scope of the investigation may not exclude any matter sought to be included by the applicants, except such matters as the Board consider are reasonable. Within the limit of his appointment, the inspector must investigate any relevant circumstances suggesting the existence of an arrangement or undertaking which is or was likely to be observed in practice though not legally binding, thus bringing to light any indirect control, even though exercised through a loose and informal arrangement. In conducting his investigations, the inspector has, *mutatis mutandis*, all the powers and duties of an inspector appointed under section 164 or 165 with some modifications. The expenses of any such investigations are to be defrayed by the State.

Membership of the company and otherwise.—The scope of the investigation is in general, as the side-note to the section puts it, to determine the ownership of the company. For this purpose the membership alone might not reveal the necessary information, since the persons registered as members might not be the beneficial owners of the shares held by them. The inspector therefore has power to inquire into the true ownership of shares which are the subject of the investigation with a view to determining the persons who are in fact financially interested in the company or who are able to control or materially influence its policy.

Investigation on application of members.—It will be noted that, while the Board's powers under this section generally are discretionary, under this subsection they are mandatory, unless the Board are satisfied that the application is vexatious. It should also be noted that the Board must be *satisfied* that the application is vexatious, that is to say, it must be obviously vexatious. It is not sufficient merely that the Board should suspect that it is vexatious. Similarly, the question of the unreasonableness of any matter raised, while it is a matter for the Board, must be so to the Board's satisfaction to justify its rejection.

Subsection (5) : Including persons concerned only on behalf of others.—This provision enables the inspector to require the same assistance from nominees as he would be able to require from a person beneficially interested or from an officer or agent of the company.

Definitions.—"Member" (section 26) ; "officer or agent" (section 167 (5)) ; "agent", "company", "debenture", "officer", "share" (section 455 (1)) ; "body corporate" (section 455 (3)) ; "person" (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001).

173. Power to require information as to persons interested in shares or debentures.—(1) Where it appears to the Board of Trade that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, they may require any person whom they have reasonable cause to believe—

(a) to be or to have been interested in those shares or debentures ; or
 (b) to act or to have acted in relation to those shares or debentures as the solicitor or agent of someone interested therein ;
 to give them any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

NOTES

The section reproduces section 47 of the 1947 Act, which came into force on December 1, 1947.

The effect of the section is that, in a case where the appointment of an inspector would be a cumbersome proceeding, the Board may themselves undertake the investigation of the ownership of shares or debentures. This might arise where the small size of the shareholding requiring investigation would not warrant the appointment of an inspector.

Definitions.—" Agent ", " company ", " debenture ", " share " (section 455 (1)) ; " person " (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001).

174. Power to impose restrictions on shares or debentures.—

(1) Where in connection with an investigation under either of the two last foregoing sections it appears to the Board of Trade that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Board may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void ;
- (b) no voting rights shall be exercisable in respect of those shares ;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof ;
- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Board of Trade make an order directing that shares shall be subject to the said restrictions, or refuse to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any order (whether of the Board of Trade or of the court) directing that shares shall cease to be subject to the said restrictions which is expressed

to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2) of this section, either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares ; or
- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof ; or
- (c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy ;

shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(7) A prosecution shall not be instituted in England under this section except by or with the consent of the Board of Trade.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

NOTES

The section reproduces section 48 of the 1947 Act, which came into force on December 1, 1947.

The section must be read together with sections 172 and 173 and gives the Board of Trade power to impose sanctions if they or their inspector meet with obstruction in the course of the investigation. In effect, those sanctions can be imposed by the Board by putting a stop on the transfer of the shares or debentures, and the Board may order that any transfer during the period of the restriction is void, that no voting rights may be exercisable in respect of those shares during that period, that, in the case of shares, no further shares may be issued in the right of those shares and that no payments should be made by the company in respect of the shares or debentures except in the case of a liquidation. A right of appeal to the Court is given against such an order, and the restriction may be removed in whole or in part. Penalties are imposed for contravention of these restrictions while they are in force.

Persons concerned.—This would include any of the persons referred to in sections 172 (5) (a) or 173 (1) (a) and (b).

Appeal to the Court.—The application is by motion under R.S.C., Order 53B, r. 7, see S.I. 1948 No. 1756.

Order permitting a transfer.—The power to continue the restrictions would appear to arise only where the order removes the restrictions to permit the transfer of the shares (i.e., under subsection (2) (a), *supra*). If, for example, the restriction on the exercise of voting rights under *ibid.*, paragraph (b) is removed, it would seem this subsection would not apply.

Any person whom he does not know to be aware of the fact.—It is not sufficient for him to believe that the person is or might be aware of the fact. The duty to inform such person arises so long as the holder does not definitely *know* that he is aware of the restriction.

Proxies.—See section 136.

Definitions.—"Officer who is in default" (section 440 (2)); "company", "debenture", "officer", "share", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

175. Saving for solicitors and bankers.—Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Board of Trade or to an inspector appointed by them—

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client ; or
- (b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

NOTES

The section reproduces section 49 of the 1947 Act, which came into force on December 1, 1947.

The section provides for the protection of privileged communications by solicitors' clients, and also protects customers of a company's bankers by providing that the bankers need not give (in their capacity of company bankers) any information about the affairs of customers other than the company.

Directors and other Officers

176.—Directors.—Every company registered on or after the first day of November, nineteen hundred and twenty-nine (other than a private company) shall have at least two directors, and every company registered before that date (other than a private company), and every private company, shall have a director.

NOTES

The section combines section 139 of the 1929 Act and section 26 (1) of the 1947 Act. The latter section came into force on July 1, 1948.

Effect of change.—Every company (including a private company) must now have at least one director, and every company other than a private company or one registered before November 1, 1929, must have at least two directors. Under the 1929 Act a private company or a company registered before November 1, 1929, was not required to have any directors.

Other related provisions.—Section 183 (appointment of directors) ; section 184 (removal of directors) ; section 185 (retiring age of directors) ; section 188 (disqualification of directors from office) ; section 190 (prohibition of loans) ; section 196 (remuneration—disclosure in accounts) ; section 197 (loans to firms).

Definitions.—" Private company " (section 28) ; " company ", " director " (section 455 (1)).

177. Secretary.—(1) Every company shall have a secretary and a sole director shall not also be secretary.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

NOTES

The section corresponds with section 26 (1), (3) of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that the office of secretary is now made statutory (subsection (1)), but provision is made for his deputy or assistant or any other officer of the company to act in certain conditions (subsection (2)). It should be noted that no penalty is imposed in the case of a company not appointing a secretary (but see section 126).

Sole director may not be secretary.—See further section 178.

Register of directors and secretaries.—See section 200.

Definitions.—" Company ", " director ", " officer " (section 455 (1)) ; " secretary " (Table A, Part I, article 1). " Officer " includes a secretary (section 455 (1)).

178. Prohibition of certain persons being sole director or secretary.—No company shall—

- (a) have as secretary to the company a corporation the sole director of which is a sole director of the company ; or
- (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

NOTES

The section corresponds with section 26 (1) of the 1947 Act, which came into force on July 1, 1948.

The section defines and amplifies the provision of section 177 (1) that a sole director may not also be secretary. If he is a sole director of another company, that company cannot be the company's secretary. Conversely, a company the sole director of which is the secretary of another company cannot be the sole director of the other company.

Definitions.—"Company", "director" (section 455 (1)); "corporation" (section 455 (3)); "secretary" (Table A, Part I, article 1). "Officer" includes a secretary (section 455 (1)).

179. Avoidance of acts done by person in dual capacity as director and secretary.—A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

NOTES

The section corresponds with section 26 (4) of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that on the occasions when documents must be signed both by a director and secretary, one person may not fulfil the functions of both secretary and director. For example, the annual return requires the signature of both a director and the secretary (see section 126).

In place of the secretary.—See section 177 (2).

Definitions.—"Director" (section 455 (1)); "secretary" (Table A, Part I, article 1); "Officer" includes a secretary (section 455 (1)).

180. Validity of acts of directors.—The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

NOTES

The section reproduces section 143 of the 1929 Act.

The section only applies to acts done by persons whose appointment or qualification is afterwards found to be defective. It does not cover a case where there has been a total absence of appointment or a fraudulent usurpation of authority (*Morris v. Kanssen*, 1946] A.C., 459).

181. Restrictions on appointment or advertisement of director.

—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(a) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(b) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(5) This section shall not apply to—

- (a) a company not having a share capital ; or
- (b) a private company ; or
- (c) a company which was a private company before becoming a public company ; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business

NOTES

The section combines section 140 of the 1929 Act and section 32 of the 1947 Act. The latter section came into force on July 1, 1948.

The section provides certain safeguards for the protection of shareholders as regards the appointment of directors of public companies. This is accomplished by a comprehensive set of regulations, the object of which is to secure that a director named or proposed as such in a prospectus (including a statement in lieu, if applicable) must give his consent to the Registrar of Companies that he has so agreed to act, and comply with one of the conditions set out in subsection (1) (b), *supra*.

Effect of change.—The undertaking referred to in subsection (1) (b) (iii) is now to be construed as referring to the share qualification which he is for the time being required to hold on his appointment or to obtain within a period determined by reference to his appointment. Any share qualification which may be required to be held as at some future date not determined by reference to the appointment is therefore excluded.

Prospectus.—See sections 37 to 46.

Statement in lieu.—See section 48.

Registration of memorandum and articles.—See sections 6, 12, 13.

Consent in writing.—For the form, see Board of Trade Form No. 42 (S.R. & O. 1929 No. 823, Sched., see Appendix V, *post*).

Qualification shares.—See section 182, *post*. The Act does not make obligatory a share qualification for directors. This is a matter for the articles (see, e.g., the First Schedule, Table A, Part I, article 77). A person is not qualified in respect of qualification shares until he has been registered as the holder thereof (*Channel Collieries Trust, Ltd. v. Dover, St. Margaret's and Martin Mill Light Rail Co.*, [1914] 2 Ch. 506, C.A.; 10 Digest 1147, 8118).

Membership.—See section 26.

List of persons who have consented to be directors.—For the form, see Board of Trade Form No. 43 (S.R. & O. 1929 No. 823, Sched., see Appendix V, *post*).

Private company becoming public company.—See section 30.

Commencement of business.—See section 109.

Definitions.—"Private company" (section 28); "articles", "company" "director", "memorandum", "registrar", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "writing" (*ibid.*, section 20).

182. Share qualifications of directors.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

NOTES

The section reproduces section 141 of the 1929 Act.

The effect of the section is that non-member directors are allowed. If, however, the articles of a company provide that a director hold a share qualification, he must comply with the requirements prescribed in the articles. Otherwise his office will be vacated, and thereafter he may only reoccupy office on obtaining his share qualification. If a person acts as director in contravention of these provisions, he is liable to a penalty. As to relief from such liability, see section 448, and *Re Gilt Edge Safety Glass, Ltd.*, [1940] Ch. 495, [1940] 2 All E.R. 237).

It should be noted that a non-member director is, of course, prohibited from voting at meetings of the company and also from being counted as part of the quorum, unless he is appointed as proxy (see section 136. See also sections 137, 138 (polls and voting)).

Other related provisions.—Section 83 (share warrants); section 181 (share qualification); section 184 (removal of directors).

Definitions.—"Share warrant" (section 83 (2)); "articles", "company", "director", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19); 18 Halsbury's Statutes 1001).

183. Appointment of directors to be voted on individually.—

(1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time :

Provided that—

(a) this subsection shall not be taken as excluding the operation of section one hundred and eighty of this Act ; and

(b) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the company's articles.

NOTES

The section corresponds with section 28 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is to increase control over the appointment of directors by the shareholders. The section provides that a resolution at a general meeting of a public company for the appointment of persons as directors must be moved individually

for each person proposed to be appointed unless the meeting first resolves otherwise without dissent. A resolution moved in contravention is void, whether it was objected to at the time or not, but acts done by a director before the invalidity of the appointment is apparent remain valid. Where an appointment is upset as invalid under this last provision, the vacancy so created cannot be filled by the retiring director under a provision for automatic reappointment in default of another appointment. The section does not apply to a private company.

Validity of acts of directors.—See section 180. The liabilities of directors in those cases are as great as if they had been properly appointed (see *Briton Medical, General and Life Association v. Jones* (2) (1889), 61 L.T. 384; 9 Digest 441, 2860). It does not, however, validate their tenure of office, e.g., so as to entitle them to remuneration (*Re Allison, Johnson and Foster, Ltd., Ex parte Birkenshaw*, [1904] 2 K.B. 327; 10 Digest 992, 6875). See further, 5 Halsbury's Laws (2nd Edn.), pp. 298, 299.

Section not to apply to resolution altering the articles.—The effect of subsection (4) is not entirely clear. It would appear to provide for the case where a resolution moved in contravention of the section, provides for altering the articles, e.g., to allow for more than one director to be appointed by one resolution, and also making other alterations in the articles which have no connection with the appointment of directors. Under subsection (2), *supra*, such a resolution would be void as to the whole resolution. Subsection (4) would appear to provide that, while that portion of the resolution relating to the appointment of directors is void, the rest of the resolution remains valid.

Other related provisions.—Section 131 (annual general meeting); section 134 (voting); section 141 (resolutions, generally); First Schedule, Table A, Part I, articles 89 to 97 (rotation of directors).

Definitions.—"Private company" (section 28); "articles", "company", "director" (section 455 (1)); "person" (Interpretation Act, 1889, section 19 18 Halsbury's Statutes 1001).

184. Removal of directors.—(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him:

Provided that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life on the eighteenth day of July, nineteen hundred and forty-five, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application

either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

NOTES

The section reproduces section 29 of the 1947 Act, which came into force on July 1, 1948.

General note.—Shareholders now have greater powers to remove a director with whom they are dissatisfied. Any director (except a person who was a permanent director of a private company on July 18, 1945), whether under agreement or not and notwithstanding anything in the articles to the contrary, is removable by an ordinary resolution, but without prejudice to his contractual right to compensation. The section guards against a snap vote being taken at a meeting on a resolution to remove a director or to appoint another director in his place by providing that special notice of that resolution must be given, and where such notice is given, the company must communicate it to the director concerned, who has the right to address the meeting, and if required, circulate representations made by him provided that such representations do not include defamatory statements. The application to the court under subsection (3) is by summons, R.S.C. Order 53B, r. 8 (u), S.I. 1948 No. 1756.

Removal by ordinary resolution.—The 1929 Act contained no provision for the removal of a director by ordinary resolution, but article 80 of Table A of that Act provided for his removal by extraordinary resolution.

Period of office.—I.e., one fixed for a defined period of time by agreement between the company and himself or one arising by virtue of the contract between the members of the company and himself, e.g., in the articles or otherwise.

Special notice.—See section 142.

Representatives.—Cf. similar provisions with regard to auditors, as to which, see section 160.

Casual vacancy.—I.e., one which does not occur through retirement by rotation and may be filled although a general meeting has been held (*Munster v. Cammell Co.* (1882), 21 Ch.D. 183; 9 Digest 436, 2834; *Bennett Brothers (Birmingham), Ltd. v. Lewis* (1903), 20 T.L.R. 1, C.A.; 9 Digest 436, 2836). See also the First Schedule, Table A, Part I, article 95, and generally, 5 Halsbury's Laws (2nd Edn.), p. 343.

Retirement of directors.—See Table A, Part I, articles 89 to 93.

Compensation or damages.—As to remuneration of directors, see First Schedule, Table A, Part I, article 76. Any payment to a director in the absence of special provision for payment, is in the nature of a gratuity (*Hulton v. West Cork Rail. Co.* (1883), 23 Ch.D. 654, C.A.; 9 Digest 474, 3109). Apart, therefore, from contract or agreement, directors cannot claim remuneration for their services on a *quantum meruit* (*Dunston v. Imperial Gas Light Co.* (1831), 3 B. & Ad. 125; 10 Digest 1149, 8127; *Woolf v. East Nigel Gold Mining Co., Ltd.* (1905), 21 T.L.R. 660; 9 Digest 434, 2828). See also 5 Halsbury's Laws (2nd Edn.), pp. 307 *et seq.*; Magnus and Estrin on the Companies Act, 1947, notes to section 29.

Power of removal apart from the section.—See, e.g., Table A, Part I, article 88, *post*.

Definitions.—"Member" (section 26); "private company" (section 28); "articles", "company", "director", "the Court" (section 455 (1)).

185. Retirement of directors under age limit.—(1) Subject to the provisions of this section, no person shall be capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of seventy.

(2) Subject as aforesaid, a director of a company which is subject to this section shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy :

Provided that acts done by a person as director shall be valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of this subsection.

(3) Where a person retires by virtue of the last foregoing subsection, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply ; and if at the meeting at which he retires the vacancy is not filled it may be filled as a casual vacancy.

(4) Subsection (2) of this section shall not apply to a director who is in office at the commencement of this Act so as to terminate his then appointment before the conclusion of the third annual general meeting commencing after the commencement of this Act, but shall apply so as to terminate it at the conclusion of that meeting if he has attained the age of seventy before the commencement of the meeting.

(5) Nothing in the foregoing provisions of this section shall prevent the appointment of a director at any age, or require a director to retire at any time, if his appointment is or was made or approved by the company in general meeting, but special notice shall be required of any resolution appointing or approving the appointment of a director for it to have effect for the purposes of this subsection and the notice thereof given to the company and by the company to its members must state or must have stated the age of the person to whom it relates.

(6) A person reappointed director on retiring by virtue of subsection (2) of this section, or appointed in place of a director so retiring, shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement ; but, except as provided by this subsection, the retirement of a director out of turn by virtue of the said subsection (2) shall be disregarded in determining when any other directors are to retire.

(7) In the case of a company first registered after the beginning of the year nineteen hundred and forty-seven, this section shall have effect subject to the provisions of the company's articles ; and in the case of a company first registered before the beginning of that year—

- (a) this section shall have effect subject to any alterations of the company's articles made after the beginning thereof ; and
- (b) if at the beginning thereof the company's articles contained provision for retirement of directors under an age limit or for preventing or restricting appointments of directors over a given age this section shall not apply to directors to whom that provision applies.

(8) A company shall be subject to this section if it is not a private company or if, being a private company, it is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company ; and for the purposes of any other section of this Act which refers to a company subject to this section, a company

shall be deemed to be subject to this section notwithstanding that all or any of the provisions thereof are excluded or modified by the company's articles.

NOTES

The section reproduces section 30 of the 1947 Act, which came into force on July 1, 1948.

General note.—In general, no person over 70 may be appointed or reappointed director of a company which comes within this section unless his continuation in office is approved by resolution, of which special notice (stating his age) must be given or the company's articles provide for some other age limit in accordance with the requirements of subsection (7), *supra*, and in the circumstances there given (*ibid.*). The retiring age provided for in this section takes effect at the conclusion of the general meeting next after the attainment of that age and directors are not required to retire immediately on attaining that age, since special provision is made for directors who are in office at that date (subsections (2), (4)). Transitional provisions are contained in subsection (4), a period of grace being allowed to directors in office at the time the section comes into force so that companies will not be inconvenienced by their abrupt removal. At the same time, shareholders will have time to consider their suitability for continuance in office. The companies which come within the section are defined in subsection (8).

Annual general meeting.—See section 131.

Provision for automatic reappointment.—See section 184. Where a company holds no annual general meeting in breach of its articles and of section 131 directors who should, under the articles, have vacated office at that meeting, will vacate office on the last day of the year in which the meeting should have been held, since that is the last day on which the meeting could be held (*Re Consolidated Nickel Mines, Ltd.*, [1914] 1 Ch. 883; 9 Digest 457, 2968). On the same principle, presumably the directors who would have retired by virtue of the age limit at the meeting, had it been held, must vacate office on the last day of the calendar year in which the meeting should have been held.

Casual vacancy.—See section 184.

Special notice.—See section 142.

Rotation of directors.—See the First Schedule, Table A, Part I, articles 89 to 97.

Registration of company.—See section 13.

Other related provisions.—Section 183 (appointment of directors); section 184 (removal of directors); section 186 (duty to disclose age); section 188 (disqualification, of certain persons from acting as directors).

Definitions.—"Private company" (section 28); "articles", "company", "director" (section 455 (1)).

186. Duty of directors to disclose age to company.—(1) Any person who is appointed or to his knowledge proposed to be appointed director of a company subject to the last foregoing section at a time when he has attained any retiring age applicable to him as director either under this Act or under the company's articles shall give notice of his age to the company:

Provided that this subsection shall not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

(2) Any person who—

- (a) fails to give notice of his age as required by this section; or
- (b) acts as director under any appointment which is invalid or has terminated by reason of his age;

shall be liable to a fine not exceeding five pounds for every day during which the failure continues or during which he continues to act as aforesaid.

(3) For the purposes of the last foregoing subsection, a person who has acted as director under an appointment which is invalid or has terminated shall be deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he is shown to have acted thereunder.

NOTES

The section reproduces section 31 of the 1947 Act, which came into force on July 1, 1948.

General note.—The object of these provisions is to ensure that shareholders should be informed when any of their directors or proposed directors reach the retiring age (as to which, see section 185). In that way, shareholders can consider whether such director should be retained or appointed. If such knowledge is concealed from the shareholders, the director concerned is liable to certain penalties. In the case of a director reappointed after he has attained the age limit, he need not give notice of that fact to the company, since the date of his birth will have been entered in the register of directors and secretaries under section 200 (1) (a) (subsections (1), (2). Subsection (3) defines the method of computing the period during which a person acting as director continues so to act for the purpose of assessing the fine referred to in subsection (2), *infra*.

Notice of age.—For the method of giving notice, see section 437.

Acts under invalid appointment.—See section 180. Until the contrary is proved, all appointments of directors or managers are deemed to be valid (see *Dawson v. African Consolidated Land and Trading Co.*, [1898] 1 Ch. 6, C.A.; 9 Digest 433, 2823).

Definitions.—"Articles", "company", "director" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

187. Provisions as to undischarged bankrupts acting as directors.—(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the third day of August, nineteen hundred and twenty-eight, acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) In England the leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression "official receiver" means the official receiver in bankruptcy.

(4) Subsection (1) of this section in its application to Scotland shall have effect as if the words "sequestration of his estates was awarded" were substituted for the words "he was adjudged bankrupt".

NOTES

The section reproduces section 142 of the 1929 Act.

The effect of the section is to prevent an undischarged bankrupt from acting as a director or manager of a company without leave of the Court. The question whether the undischarged bankrupt has acted in that capacity is a question of fact. For instance, an arrangement whereby an undischarged bankrupt is appointed secretary to a company whilst his wife acts as director might be construed as the undischarged bankrupt really acting as manager. The words "directly or indirectly" used in the context (subsection (1)) should be given the widest interpretation, and would prohibit, for example, the appointment of a nominee director for an undischarged bankrupt.

Concerned in management of company.—"Concerned" may mean something different from "interested" (see *Hill (Geo.) & Co. v. Hill* (1886), 55 L.T. 769; 43 Digest 52, 537).

Company.—Subsection (3) gives the term a rather more extended meaning than in section 455 (1)).

Leave of Court.—See Bankruptcy Rules, 1915, rule 239A. The application is by motion. Notice thereof together with a copy of the affidavit in support must be served on the official receiver and application made for a date for the hearing of the motion. The registrar must give notice to the official receiver of the hearing and the latter must make a report. The bankrupt, not less than two days from the hearing, must file a notice specifying the statements, if any, in the report he intends to dispute and send a copy to the official receiver. Appeal lies to the Court of Appeal at the instance of the bankrupt or the Board of Trade.

Place of business.—See section 406.

Definitions.—"Company", "director", "the Court" (section 455 (1)).

188. Power to restrain fraudulent persons from managing companies.—(1) Where—

- (a) a person is convicted on indictment of any offence in connection with the promotion, formation or management of a company ; or
- (b) in the course of winding up a company it appears that a person—
 - (i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section three hundred and thirty-two of this Act ; or
 - (ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company ;

the court may make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period not exceeding five years as may be specified in the order.

(2) In the foregoing subsection the expression "the court", in relation to the making of an order against any person by virtue of paragraph (a) thereof, includes the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company ; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or the liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of sub-paragraph (ii) of paragraph (b) of subsection (1) of this section notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said sub-paragraph (ii) the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on

indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

NOTES

The section reproduces section 33 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that a person guilty of the offences here set out may be disqualified for a period of up to five years from being concerned or taking part in the management of a company, without leave of the Court having jurisdiction to wind up the company. Acting while disqualified renders the offender liable to a heavy penalty. It will be noted that disqualification under the section may be imposed by any Court before whom the offender is convicted on indictment under subsection (1) (a), *supra*, or by the Court in the course of a winding up, if it appears that a person has been guilty of such offences, *whether he is convicted or not*, and that such an order can be made notwithstanding that the person concerned may be criminally liable (see subsection (5), *supra*). It will also be noted that an application for an order under subsection (1) (b), *supra*, may be made by the official receiver or the liquidator or by any past or present member or creditor (see subsection (4), *supra*).

The section extends the operation of section 332, *post*, which already provides for a similar disqualification in the case of any director, past or present, who was knowingly party to the fraudulent management of the company's business.

Conviction on indictment.—Conviction by a court of summary jurisdiction will not entail disqualification even if the conviction is for an indictable offence. A court of criminal jurisdiction possessed the power of disqualification under the 1929 Act, but it was limited to cases within *ibid.*, section 275 (now section 332, *post*). It is now extended to all convictions on indictment for offences in connection with a company.

Offences in connection with promotion, formation or management of a company.—As to promotion of companies, see generally, 5 Halsbury's Laws (2nd Edn.), pp. 103 *et seq.*; as to formation of companies, see *ibid.*, pp. 117 *et seq.*, and as to regulation and management, see *ibid.*, pp. 290 *et seq.* As to crimes and offences in connection with the management of a company, see generally, *ibid.*, pp. 434 *et seq.* See also *R. v. Aspinall* (1876), 2 Q.B.D. 48, C.A.; 9 Digest 486, 3190 (liability of promoters); *R. v. Lawson*, [1905] 1 K.B. 541; 9 Digest 547, 3611 (persons liable as officers); *R. v. Kysant (Lord)*, [1932] K.B. 442; Digest Supp. (fraudulent prospectus). See also sections 44, 84, 85, *ante*, and 205, 328–334, 438–446, 448, *post*.

Winding up.—See generally, Part V.

Subsection (1) (b) (i).—It will be noted that the liabilities under this subparagraph are limited to the cases where liability would arise under section 332. If the person concerned would not be liable under that section he will not be liable under this subparagraph. The extension of the power of disqualification under the present section seems to be rather in paragraph (a), *supra*, and in subparagraph (ii) of paragraph (b).

Fraudulent purpose.—See *Re Leitch (William C.) Brothers, Ltd.*, [1932] 2 Ch. 71; Digest Supp.; *Re Leitch (William C.) Brothers, Ltd. (No. 2)*, [1933] Ch. 261; Digest Supp.; *Re Patrick and Lyon, Ltd.*, [1933] Ch. 786; Digest Supp.

The Court.—As to the Court concerned, see subsection (2), *supra*. It will be noted that, while the Court before whom a person is convicted may order his disqualification, the granting of leave may be given only by the Court having jurisdiction to wind up the company in respect of which leave is sought. Note also that, in case of conviction under subsection (1), the Court having jurisdiction in winding up may make an order of disqualification, as well as the Court before which the conviction took place. The application is by summons, R.S.C., Order 53B, r. 8 (k); as to title see *ibid.*, r. 4 (2); S.I. 1948 No. 1756.

Persons intending to apply.—I.e., the official receiver, the liquidator or a past or present member or creditor. Subsection (4) applies only to applications to the Court having jurisdiction in winding up. In the case of the Court before whom a person is convicted, the person concerned will be before the Court as a party to the proceedings and will therefore have a right of appeal. In the case of an application to the Court having jurisdiction in winding up, but for this subsection, he might have no knowledge that such an application was being made, he might have no opportunity to appear and the order might be made in circumstances in which he would have no right of appeal. It is therefore provided that notice is to be given him, thus giving him the opportunity to appear as a party to the proceedings, with the right of appeal in the event of an order being made against him. The procedure on such application would appear to be similar to that under section 332, as to which, see the notes to that section.

Definitions.—"Member" (section 26); "promotor" (section 43 (5)); "company", "director", "officer", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

189. Prohibition of tax-free payments to directors.—(1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax or of income tax other than surtax, or otherwise calculated by reference to or varying with the amount of his income tax or his income tax other than surtax, or to or with the rate or standard rate of income tax, except under a contract which was in force on the eighteenth day of July, nineteen hundred and forty-five, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles, or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and surtax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before the commencement of this Act or in respect of a period before the commencement of this Act.

NOTES

The section reproduces section 34 of the 1947 Act, which came into force on July 1, 1948.

General note.—The section applies to all companies. Its provisions fall under three headings—(i) a contract in force on July 18, 1945, which expressly provides for tax free remuneration to a director; (ii) a provision in the articles for payment of remuneration tax free; (iii) a contract entered into after that date providing for such payments. In the first mentioned case, the arrangement is unaffected by the provisions of this section, provided it is an express arrangement and not one to be implied by reference to the articles. In the second and third cases, payment of tax free remuneration is prohibited and an agreement to do so will be interpreted as an agreement to pay, as a gross sum subject to tax, the net sum provided for, that is to say, it will be treated as though the words "tax free" were not there. It will be noted that the provisions of the section are not retrospective (see subsection (3), *supra*).

Persons to whom the provisions apply.—The prohibition against the payment of tax free remuneration applies equally to a payment to a director for services other than in his capacity as director (subsection (1)).

Arrangements to pay tax free remuneration prior to the coming into force of the section.—Such remuneration may be paid in the manner agreed between the director and the company (subsection (3)).

Directors' remuneration.—See the First Schedule, Table A, Part I, article 76.

Commencement of this Act.—See section 462.

Definitions.—"Articles", "company", "director" (section 455 (1)).

190. Prohibition of loans to directors.—(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either—

- (a) to anything done by a company which is for the time being an exempt private company; or
- (b) to anything done by a subsidiary, where the director is its holding company; or
- (c) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
- (d) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (c) to the foregoing subsection shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed ; or
- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

NOTES

The section reproduces section 35 of the 1947 Act, which came into force on July 1, 1948.

The section, in general, prohibits loans to directors except in the cases set out in the proviso to subsection (1), *supra*. It will be noted that paragraphs (a), (b) and (d) of that proviso are not affected at all by this section, while loans made under the provisions of paragraph (c) are subject either to the prior approval of the company under subsection (2) (a) or to the condition contained in *ibid.*, paragraph (b). In the latter case, a contingent liability is placed upon the directors who authorised the transaction (see subsection (3), *supra*). In general, apart from the exception in favour of an exempt private company, the cases in which loans are permitted are, in effect those made for the benefit of the company or in the course of the company's business.

Subsection (3) : Directors' liability.—The cases on liability of directors for breach of trust (see 5 Halsbury's Laws (2nd Edn.), pp. 326, 327), would not appear to be in point here, since the authorisation of such loans is clearly permitted by the section. It would appear, however, from the decision in *Cargill v. Bower* (1878), 10 Ch.D. 502 ; 9 Digest 485, 3181, that a director who was absent would escape liability, at any rate, if he did not know that it was proposed to authorise the loan. Presumably, too, directors who were present at the board meeting but who opposed the making of the loan would also escape liability. An action against the directors who are liable on the indemnity would normally be brought by the company (*Burland v. Earle*, [1902] A.C. 83, P.C. ; 9 Digest 602, 4020). If, however, the directors, through their controlling interest, prevented such action being brought, any shareholder, it would seem, could bring the action (*Burland v. Earle*, *supra* ; *Normandy v. Ind, Coope & Co., Ltd.*, [1908] 1 Ch. 84 ; 9 Digest 665, 4428). A director who is jointly and severally liable is, in general, entitled to contribution from his co-directors who are jointly and severally liable with him (*Ashhurst v. Mason* (1875), L.R. 20 Eq. 225 ; 9 Digest 71, 3091), and this right of contribution is available against the estate of a deceased director who was liable to contribute (*Jackson v. Dickinson*, [1903] 1 Ch. 947 ; 9 Digest 205, 1269).

Particulars in accounts of loans to officers.—See section 197.

Liability of directors for misapplication of funds.—See section 333.

Annual general meeting.—See section 131.

Definitions.—"Private company" (section 28) ; "exempt private company" (section 129) ; "holding company", "subsidiary" (section 154) ; "company", "director", "officer" (section 455 (1)) ; "person" (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001).

191. Approval of company requisite for payment by it to director for loss of office, etc.—It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company.

NOTES

The section reproduces section 36 (1) of the 1947 Act, which came into force on July 1, 1948.

The section in effect extends the provision of section 150 of the 1929 Act (now incorporated in sections 192, 193) in regard to the disclosure of payments made to directors by way of compensation for loss of office. Section 150 (1) of the 1929 Act (now section 192) required such disclosure to be made where the compensation is paid in connection with the transfer of the whole or any part of the undertaking or property of the company. The present section requires disclosure to be made in any event. The main distinction between this and the next section is that the compensation here referred to is paid by the company itself, whereas under section 192, the compensation is receivable from other sources. Consequently, it is not necessary to provide in this section, as in section 192 (2), for the repayment to the company as trust moneys of any payments declared to be illegal, since the director will, in any case, be liable to repay the amount received.

Definitions.—"Member" (section 26); "company", "director" (section 455 (1)).

192. Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, etc.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

NOTES

The section reproduces section 150 (1), (2) of the 1929 Act.

Section 191 requires disclosure of payments made by the company as compensation for loss of office. This section provides for similar disclosure in the event of such payments from any other source in the conditions here set out. Such payments, if made without the necessary disclosure to and approval of the company are deemed to have been received in trust for the company.

Action to recover sums improperly paid.—In an action to recover sums improperly paid to a director by way of compensation on the transfer of a business from one company to another, the transferor company is a necessary party (*Clarkson v. Davies*, [1923] A.C. 100, P.C.; 9 Digest 493, 3237).

Bonus to directors on sale.—Provided that proper disclosure has been made and approval given, an agreement for sale is not necessarily bad on the ground that one of its terms is the payment of a bonus to the directors of the selling company, unless the bonus is in fact a bribe to the directors (*Southall v. British Mutual Life Assurance Society* (1871), 6 Ch. App. 614; 10 Digest 1075, 7515).

Definitions.—"Member" (section 26); "company", "director" (section 455 (1)).

193. Duty of director to disclose payment for loss of office, etc., made in connection with transfer of shares in company.—(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

- (a) any such director fails to take reasonable steps as aforesaid ; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do ;

he shall be liable to a fine not exceeding twenty-five pounds.

(3) If—

- (a) the requirements of subsection (1) of this section are not complied with in relation to any such payment as is therein mentioned ; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares ;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of the last foregoing subsection are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Board of Trade on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (3) of this section a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

NOTES

The section combines section 150 (3), (4) of the 1929 Act and section 36 (2) to (5) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The section is consequential on section 192, *ante*, and sets out the mode of disclosure required when the transfer of property referred to in the earlier section consists of shares in the company of which he is director. Certain amendments in these provisions were made by the 1947 Act.

Effect of changes.—(i) *Notice to shareholders.* The duty of the directors to secure that particulars of the proposed payment to them should be included in or sent with any notice of the offer to the shareholders (imposed by section 150 (3) of the 1929 Act) is extended to apply (a) where the offer is made by or on behalf of another company with a view to the first company becoming a member of the same group as the other company ; (b) where the offer is made by an individual with a view to his controlling at least one-third of the company's voting power ; and (c) to any offer which is made to be accepted by a given proportion of shareholders. (ii) *Sums improperly received to be held on trust.*—The provision that any sum received by a director without disclosure as in subsection (1), *supra*, is to be held in trust for those persons who have sold their shares as a result of the offer without knowing that the director is to receive such payment is extended to apply where the proposed payment

is not approved before the transfer by a meeting of the shareholders concerned summoned for that purpose. The expression "shareholders concerned" includes not only the holders of the shares to which the offer relates but also all other holders of shares in the same class. If the shareholders concerned do not comprise all the members of the company, the regulations applicable to the convening of general meetings of the company can, if necessary be modified to allow those shareholders only to take part in the meeting necessary for such approval, which will be deemed to have been given if a quorum is not present at an adjourned meeting, after the original meeting was adjourned for want of a quorum. (iii) *Distribution of sums held on trust.* Where moneys are deemed to be held on trust for shareholders as above, the expense of distribution of such sums must not be deducted therefrom, but must be borne by the director concerned.

Transfer of shares.—See generally, sections 73 to 85.

Provisions relating to general meetings.—See sections 130 *et seq.*, Table A, Part I, articles 47 *et seq.* Where no provision is made in the articles for the summoning of the meeting, the meeting will be called in accordance with the provisions of the articles relating to general meetings, except that only the shareholders concerned will be sent notices. Where no special provision is made in the articles, the meeting will be summoned in accordance with the provisions of the Act. These provisions will, *prima facie*, be applied without modification. Where, however, some modification is necessary, the Board of Trade may, on the application of any person concerned, order any modification necessary to adapt the provisions to the particular circumstances of the meeting.

Quorum.—See section 134. The provision that if no quorum is present at an adjourned meeting approval is deemed to have been given obviates the necessity for adjourning the meeting a second time. In any case, as the meeting is held to ensure that the shareholders affected are given an opportunity to express dissent, if they are not sufficiently interested to attend either the meeting or the adjourned meeting, it may safely be assumed that they do not dissent. This provision is necessary, since it has been held that a provision that the members present at an adjourned meeting should form a quorum does not apply to a meeting of a special class of shareholders (*Hemans v. Hotchkiss Ordnance Co.*, [1899] 1 Ch. 115, C.A.; 9 Digest 570, 3783).

Definitions.—"Member" (section 26); "holding company", "subsidiary" (section 154); "articles", "company", "director", "share" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

194. Provisions supplementary to three foregoing sections.—

(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of the last but one foregoing section or subsections (1) and (3) of the last foregoing section, been received by any person in trust, it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in either of the two last foregoing sections—

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director; the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in the three last foregoing sections to payments made to any director of a company by way of com-

pensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in the two last foregoing sections shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

NOTES

The section combines section 150 (5), (6) of the 1929 Act and section 36 (6), (7) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

The section explains and defines certain of the terms and expressions used in sections 191 to 193. Subsections (2) and (4) re-enact the provisions of section 150 (5), (6) of the 1929 Act. Subsections (1) and (3) are new.

Effect of changes.—(i) *Recovery of payments to directors by action.* Any payments which, by operation of section 192 or 193 (1) and (3) are deemed to be held in trust for the company or for particular shareholders, may be recovered by action. In any such proceedings, if it is shown that a director received a particular payment as a result of an arrangement entered into as part of the agreement for the transfer or within one year before or two years thereafter, the company or the transferee being privy to that arrangement, that payment will be *prima facie* deemed to be one to which sections 192 or 193 respectively apply. (ii) *Payments in respect of pensions, etc.* So as to avoid any misunderstanding it is made clear that sections 191 to 193 do not apply to a *bona fide* payment by way of damages for breach of contract, or to a pension, superannuation allowance, etc., paid to a director for past services.

Rule of law requiring disclosure.—See e.g., sections 196 to 198.

Definitions.—"Company", "director", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

195. Register of directors' shareholdings, etc.—(1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

(2) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows :—

- (a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company ; and
- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Board of Trade.

In computing the fourteen days and the three days mentioned in this subsection, any day which is a Saturday or Sunday or a bank holiday shall be disregarded.

(6) Without prejudice to the rights conferred by the last foregoing subsection, the Board of Trade may at any time require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) If default is made in complying with the last foregoing subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds ; and if default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds and further to a default fine of two pounds.

(9) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(10) For the purposes of this section—

- (a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company ; and
- (b) a director of a company shall be deemed to hold, or to have any interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—
 - (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions ; or
 - (ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

NOTES

The section reproduces section 37 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that any director having dealings in the shares or debentures of the company or of a subsidiary of which he is a director must make full disclosure thereof in the manner provided for by the section. These requirements are not applicable in the following cases—(i) shares or debentures held by a holding company in the subsidiary in circumstances where the holding company is its director (subsection (1)) ; (ii) shares in a wholly owned subsidiary held by a Director to qualify as a Director or as a pure nominee (*ibid.*). In all other cases, every company must keep a register of directors' shareholdings, which must be open to inspection in the manner provided for under subsection (5), *supra*, and also at the annual general meeting (subsection (7)). The register must be available at all times to the Board of Trade (subsection (6)). The register must record particulars of holdings and of all transactions, etc., and for that purpose, shares, etc., beneficially owned by directors and transactions by any other person on their behalf must be declared (subsections (1), (2)). Failure to make

those declarations or refusal to allow inspections, etc., as required is punishable by a fine (subsection (8)) and the Court has power to compel inspection of the register in such case (subsection (9)). The nature and extent of a director's interest will, at his request be indicated in the register (subsection (3)).

It is apprehended that bearer shares held by a director are not excluded from these provisions since a bearer share is part of the share capital of a company. The director would, by section 198, *post*, be under a duty to make disclosure of his holdings of such shares with a penalty in default (*ibid.*).

Register of directors' shareholdings.—For a suggested form of register, see Magnus and Estrin on the Companies Act, 1947, Appendix A, Form No. 9.

Application to Court.—The application to compel inspection is made by summons under R.S.C., Order 53B, rule 8 (c); S.I. 1948 No. 1756.

Definitions.—"Member" (section 26); "holding company", "subsidiary" (section 154); "default fine", "officer who is in default" (section 440); "articles", "bank holiday", "company", "director", "officer", "share", "the Court" (section 455 (1)); "body corporate" (section 455 (3)).

196. Particulars in accounts of directors' salaries, pensions, etc.—(1) In any accounts of a company laid before it in general meeting, or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned—

- (a) the aggregate amount of the directors' emoluments;
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (a) of subsection (1) of this section—

- (a) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and
- (b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression "emoluments", in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to United Kingdom income tax, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

(3) The amount to be shown under paragraph (b) of the said subsection (1)—

- (a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in the last foregoing subsection, whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and
- (b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment, and

the expression "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution" in relation to a pension scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under paragraph (c) of the said subsection (1)—

(a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of the said subsection (1)—

(a) shall include all relevant sums paid by or receivable from—

- (i) the company; and
- (ii) the company's subsidiaries; and
- (iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section one hundred and ninety-three of this Act, to past or present members of the company or any of its subsidiaries or any class of those members; and

(b) shall distinguish, in the case of the amount to be shown under paragraph (c) of the said subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (a) of the last foregoing subsection, but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year; those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto, and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary—

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary ; and

(b) shall for the purposes of subsections (2) and (3) be taken as referring to a subsidiary at the time the services were rendered, and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

NOTES

The section corresponds with section 38 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that every company's accounts must disclose as a separate item in each case the total of directors' emoluments, pensions, and compensation for loss of office (subsection (1)). Under the 1929 Act (sections 128 and 148) disclosure was not required in the case of remuneration paid to managing directors or other directors holding salaried employment, while the figure in the accounts for directors' remuneration as such could omit anything paid by way of expense allowances, pensions, or benefits. Those provisions have now been superseded. Under the present section, shareholders are entitled to be informed (in the manner herein provided) of the amount of directors' emoluments in whatever capacity they act. The term "emoluments" now includes pension contributions, expense allowances charged to income tax, and benefits (subsection (2)). Certain exceptions, however, apply with regard to disclosure, and these are dealt with in subsection (3), *supra*. A duty is imposed on the company to give information as to sums received by the directors from persons other than the company, and where the company has the right to obtain that information, it is under a duty to obtain it, and to make the necessary disclosure (as to which, see section 198, subsection (1)). As to the information to be disclosed and how it is to be shown, the following points should be specially noted :—(i) sums which are relevant must be accounted for (subsection (5)); (ii) accounting treatment as regards disclosure of directors' emoluments, etc., charged for a year for which the accounts do not relate (subsection (6)); (iii) power of the directors to make apportionments (subsection (7)); (iv) rights of auditors to make observations in their report dealing with these provisions (subsection (8)).

Other related provisions.—Section 131 (general meeting); section 162 (auditors' report); section 193 (compensation for loss of office).

Definitions.—"Member" (section 26); "subsidiary" (section 154); "accounts", "book and paper", "company", "director", "financial year" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

197. Particulars in accounts of loans to officers, etc.—(1) The accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

(a) the amount of any loans made during the company's financial year to—

(i) any officer of the company ; or

(ii) any person who, after the making of the loan, became during that year an officer of the company ;

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year); and

- (b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) The foregoing subsection shall not require the inclusion in accounts of particulars of—

- (a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or
- (b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed two thousand pounds and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

NOTES

The section combines section 128 (1), (2), (4) of the 1929 Act and section 39 of the 1947 Act, and incorporates a minor drafting amendment effected by section 122 (4) and the Seventh Schedule to the latter Act, as to persons included in the expression "officer". The latter provisions came into force on December 1, 1947, while section 39 of the 1947 Act came into force on July 1, 1948.

Effect of change.—The provisions of the 1929 Act are extended to cover any person who has been an officer during the financial year, even though the loan was made before he became an officer. The section also applies to such loans as may still be made to directors under section 190. It is also clear that a loan by a subsidiary (i.e., a subsidiary at the end of the financial year (subsection (4)) or guarantee, etc., provided by the subsidiary, must be disclosed (subsection (1)). Exceptions as to disclosure, however, are provided for under subsection (2), and the auditors are under a duty to include in their report a statement giving the required particulars if the accounts do not show them (subsection (3)).

Loan made to an officer.—I.e., to an officer other than a director, except in certain limited cases (see section 190).

Auditors' report.—See section 162.

General meeting.—See section 131.

Balance Sheet.—See section 148.

Disclosure by notice.—See section 198 (1) (3).

Definitions.—"Subsidiary" (section 154); "accounts", "company", "director", "financial year", "officer" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

198. General duty to make disclosure for purposes of three foregoing sections.—(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be

necessary for the purposes of sections one hundred and ninety-five and one hundred and ninety-six of this Act and of the last foregoing section except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of the said section one hundred and ninety-five shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) of this section shall apply—

- (a) for the purposes of the last foregoing section, in relation to officers other than directors ; and
- (b) for the purposes of the said section one hundred and ninety-six and the last foregoing section, in relation to persons who are or have at any time during the preceding five years been officers ; as it applies in relation to directors.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding fifty pounds.

NOTES

The section corresponds with section 41 (1) to (4) of the 1947 Act. These provisions came into force on July 1, 1948. As to section 41 (5) of the 1947 Act, see section 199 (3), *post*.

Disclosure.—A duty is placed on a director to give notice to the company of *matters relating to himself* so far as is necessary for the purpose of the inclusion in the register of directors' shareholdings or salaries and pensions, as the case may be, required by sections 195 or 196. The extent of any obligation imposed by subsection (1), *supra*, on a director to make disclosure as to loans to himself from the company (section 197) is not clear, since loans made to "an officer" are exempted and "officer" includes a director. It would seem that "an officer" in the last line of the subsection should be read as "any officer other than the director" so as to have the same effect as section 41 of the 1947 Act. The obligation to make disclosure in respect of loans from the company extends to managers and secretaries as well as to directors, and in respect of both loans and salaries or pensions extends to persons who have been directors, managers or secretaries at any time during the preceding five years (subsection (3)).

Subsection (2).—The bringing-up and reading of the notice of disclosure in respect of a director's shareholding at a directors' meeting should ensure that a record is made in the minutes (*cf.* section 145).

Notice.—As to service of documents, *cf.* sections 107 (1), 347.

Fine. As to prosecutions, see section 442 ; as to application of fines, see section 444.

Definitions. "Company", "director", "officer" (section 455 (1)) ; "person" (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001) ; "writing" (*ibid.*, section 20).

199. Disclosure by directors of interests in contracts.—(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made :

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

NOTES

The section combines section 149 of the 1929 Act and section 41 (5) of the 1947 Act. The latter section came into force on July 1, 1948.

The effect of the section is that while, if the articles are silent on the subject (see subsection (5), *supra*), a director is not forbidden from being directly or indirectly interested in any contract, etc., with the company, a duty is imposed upon him to declare his interest in such contract ; *cf.* note to subsection (5) *infra*. It should be noted that Table A, Part I, article 84, places a general restriction on directors voting on matters in which they are interested (see the First Schedule), but the Act leaves each company free to adopt Table A or not as it desires (see section 8). The mode of declaration in the case of a proposed contract is dealt with in subsection (2), *supra*, and a general notice of interest in a specified company or firm may be given as provided for in subsection (3). The mode of giving such general notice is now also provided for (see the proviso to subsection (3), re-enacting section 41 (5) of the 1947 Act).

Effect of change.—Where a general notice of interest is given under subsection (3), *supra*, it is not effective unless the director concerned either gives it at a meeting of directors or takes reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given. The effect of this provision is that the notice is then entered in the minutes of the board meeting at which it is given or read. *Cf.* a similar provision as to disclosure in section 198 (2).

Notice.—As to service of documents, *cf.* sections 107 (1), 347.

Fines.—As to prosecutions, see section 442 ; as to application of fines, see section 444.

Subsection (5).—The equitable principle has been stated as follows : if directors “ do choose to enter into contracts in cases in which they have or may have a conflicting interest, the law will denude them of all profits they have made thereby ” per Vaughan Williams, L. J. in *Costa Rica Rail. Co., Ltd. v. Forwood*, [1901] 1 Ch. 746, at p. 761, C. A. ; 9 Digest 494, 3248. This principle is not applied to transactions that come within provisions of relevant articles, whereby, in effect, the company waives its rights under the equitable rule.

Definitions.—“ Company ”, “ director ” (section 455 (1)) ; “ writing ” (Interpretation Act, 1889, section 20 ; 18 Halsbury’s Statutes 1001).

200. Register of directors and secretaries.—(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say,—

- (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and, in the case of a company subject to section one hundred and eighty-five of this Act, the date of his birth ; and
- (b) in the case of a corporation, its corporate name and registered or principal office :

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the

company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary, and for the purposes of this proviso—

(i) the expression “company” shall include any body corporate incorporated in Great Britain ; and

(ii) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say,—

(a) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address ; and

(b) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office :

Provided that, where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.

(4) The company shall, within the periods respectively mentioned in the next following subsection, send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in the last foregoing subsection are the following, namely,—

(a) the period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company ; and

(b) the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof :

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be fourteen days from the commencement of this Act.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (3) or (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(9) For the purposes of this section—

(a) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company ;

(b) the expression “Christian name” includes a forename ;

(c) in the case of a peer or person usually known by a title different from his surname, the expression “surname” means that title ;

- (d) references to a former Christian name or surname do not include—
- (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title ; or
 - (ii) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years ; or
 - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

NOTES

The section combines sections 144 and 145 (4) of the 1929 Act and section 27 (1) to (4) and (6) to (8) of the 1947 Act. Certain of the provisions of section 27 (6), (7) and the whole of subsection (8) of that section were brought into force on December 1, 1947, to apply to the provisions of sections 144, 145 of the 1929 Act, as regards nationality of origin, and christian names and surnames of directors, while section 27 (1) to (4) came into force on July 1, 1948.

Effect of changes.—Important changes in the 1929 Act have been made. In particular, the register must now include certain particulars as regards directors and secretaries, and the register is now differently termed (subsections (1), (3)). Particulars of changes in the register to be notified to the registrar as required by subsection (5), must now include the secretary as well as specifying the date of the change (subsection (4)). Nationality of origin need no longer be shown, but the date of a director's birth must be shown in certain cases, and, in all cases, all directorships must be revealed, except directorships of, e.g., wholly owned subsidiary companies (see the proviso to subsection (2)). The rights of members and the public to inspect the register remain undisturbed (subsection (6) reproducing section 144 (3) of the 1929 Act), as is also the power of the Court to compel inspection (subsection (8)). The penalties for contravention are also extended (subsection (7)). Subsection (9) applies certain definitions as regards directors and names (*ibid.*, paragraphs (a), (b), (c)), and *ibid.*, paragraph (d) removes the necessity for publishing former names in certain cases.

Registered office.—See section 107.

Register of directors and secretaries.—This register was formerly called " the register of directors ". It will be noted that particulars need no longer be entered of managers who are not directors. For a form of register, see Magnus and Estrin on the Companies Act, 1947, Appendix D, Form No. 9. See also the Sixth Schedule, *post*.

Company subject to section 185.—See section 185 (8). The directors of such companies are subject to a retiring age. Hence the requirement that a director's date of birth be entered in the register.

Scottish firm.—In Scotland, a firm is a legal entity. It is therefore treated, for the purpose of this provision, as a corporation. In England, a firm is not a legal entity, but consists of the individuals who compose the firm. Special provision is, however, here made in the case of a firm all the partners of which are joint secretaries.

Prescribed form of return.—For the forms, see Board of Trade Forms Nos. 9 and 9A (S.R. & O. 1929, No. 823, Sched. ; S.I., 1948, No. 1518 Appendix V, *post*). Under the 1929 Act, the necessary particulars were required of directors only. Particulars of the secretaries and of any changes among them must also now be included.

Order for inspection of register.—The application is by summons under R.S.C., Order 53B, rule 8 (c) ; for precedent see Ency. Court Forms, title Companies, Vol. 6, p. 232, Form No. 122. No appearance is necessary (*ibid.*, rule 9). The affidavit in support must state that application was made at the proper time, and if the application is not made by a member must state tender of the proper sum.

Commencement of the Act.—See section 462 (2).

Definitions.—" Member " (section 26) ; " holding company ", " subsidiary ", (section 154) ; " default fine ", " officer who is in default " (section 440) ; " articles ", " company ", " officer ", " registrar ", " the Court " (section 455 (1)) ; " body corporate ", " corporation " (section 455 (3)) ; " person " (Interpretation Act, 1889 section 19 ; 18 Halsbury's Statutes 1001).

201. Particulars with respect to directors in trade catalogues, circulars, etc.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in

legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

- (a) his present Christian name, or the initials thereof, and present surname ;
- (b) any former Christian names and surnames ;
- (c) his nationality, if not British :

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

- (a) every company registered under this Act or under the Companies Act, 1929, or the Acts repealed thereby unless it was registered before the twenty-third day of November, nineteen hundred and sixteen ; and
- (b) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date, and
- (c) every company licensed under the Moneylenders Act, 1927, whenever it was registered or whenever it established a place of business.

(3) If a company makes default in complying with this section every officer of the company who is in default shall be liable on summary conviction for each offence to a fine not exceeding five pounds, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company :

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

(4) For the purposes of this section—

- (a) the expression “director” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression “officer” shall be construed accordingly ;
- (b) the expression “initials” includes a recognised abbreviation of a Christian name ; and
- (c) the expression “showcards” means cards containing or exhibiting articles dealt with, or samples or representations thereof ;

and paragraphs (b), (c) and (d) of subsection (9) of the last foregoing section shall apply as they apply for the purposes of that section.

NOTES

The section corresponds with section 145 of the 1929 Act, as amended by section 27 (6) of the 1947 Act with regard to nationality of origin and section 105 (3) of that Act with regard to the persons liable for default. The first-named provision of the 1947 Act came into operation on December 1, 1947, and the second-named provision came into force on July 1, 1948.

Effect of changes.—(i) *Nationality of origin.* Section 145 (1) (d) of the 1929 Act required a director's nationality of origin to appear on trade catalogues, etc., in addition to the other information here required. This is no longer the case. (ii) *Persons liable for default.* For the words “every director of the company” in section 145 (3) of the 1929 Act (to which subsection (3), *supra*, corresponds), the words “every officer of the company who is in default” are substituted, and a consequential alteration is made in the remainder of that subsection. A further consequential amendment is made in subsection (4) (a) by extending the definition of “director” there given to provide that the expression “officer” should be construed accordingly. (iii) *Definition of “name”.* The definitions of “christian name”

and "surname" in section 200 (9) are here imported with the amendments there effected.

Exemption by the Board of Trade.—It is the practice of the Board on an application being made for exemption to forward a form to be filled in by the applicant. Each application is decided on its merits.

Registered before November 23, 1916.—I.e., the date of the coming into operation of the Companies (Particulars as to Directors) Act, 1917 (now repealed).

Definitions.—"Officer who is in default" (section 440 (2)); "company" "director", "officer" (section 455 (1)); "corporation" (section 455 (3)).

202. Limited company may have directors with unlimited liability.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

NOTES

The section reproduces section 146 of the 1929 Act.

If so provided by the memorandum.—As to the alteration of the memorandum for this purpose, see section 203.

Definitions.—"Limited company" (section 1 (2)); "company", "director", "memorandum" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "writing" (*ibid.*, section 20).

203. Special resolution of limited company making liability of directors unlimited.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

NOTES

The section reproduces section 147 of the 1929 Act.

Unlimited liability of directors.—See section 202.

Alteration of memorandum.—See generally, sections 4, 5, 22, 23.

Definitions.—"Limited company" (section 1 (2)); "special resolution" (section 141); "articles", "company", "director", "memorandum" (section 455 (1)).

204. Provisions as to assignment of office by directors.—If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision

shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

NOTES

The section reproduces section 151 of the 1929 Act.

Definitions.—"Special resolution" (section 141); "articles", "company", "director" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability.

205. Provisions as to liability of officers and auditors.—Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

- (a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force ; and
- (b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section four hundred and forty-eight of this Act in which relief is granted to him by the court.

NOTES

The section reproduces section 152 of the 1929 Act, except that proviso (a) of that section, which limited its application to provisions in force at the commencement of that Act, is not here reproduced, and a minor drafting amendment, which was effected by section 122 (4) and the Seventh Schedule to the 1947 Act, deleting the reference in the 1929 Act to directors or managers as such, is incorporated. The provisions of the 1947 Act here mentioned came into force for some purposes on December 1, 1947, and for the remainder on July 1, 1948.

Liability of officers.—Before 1929 articles could validly provide that directors and other officers should not be liable for losses caused by them unless they were caused by their own dishonesty (*Re Brazilian Rubber Plantations and Estates, Ltd.*, [1911] 1 Ch. 425, C.A. ; 9 Digest 128, 666) or by their own wilful neglect or default (*Re City Equitable Fire Insurance Co., Ltd.*, [1925] Ch. 407, C.A. ; Digest Supp.) or wilful act or default (*Re City of London Insurance Co., Ltd.* (1925), 41 T.L.R. 521 ; Digest Supp.).

Indemnity in respect of successful proceedings.—The expenses of a director in defending himself against an allegation that he did something which he did not in fact do and which it was not his duty to do are not incurred by him as a director and are therefore not recoverable under an indemnity covering "any act done by him as director" or under the common law (*Tomlinson v. Scottish Amalgamated Silks, Ltd.* (Liquidators), [1935] S.C. (H.L.) 1 ; Digest Supp.).

Definitions.—"Articles", "company", "officer", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

Arrangements and Reconstructions

206. Power to compromise with creditors and members.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the

creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) An order under subsection (1) of this section pronounced in Scotland by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933, shall not be subject to review, reduction, suspension or stay of execution.

(6) In this and the next following section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

NOTES

The section reproduces section 153 of the 1929 Act, as amended by section 4 of the Administration of Justice (Scotland) Act, 1933 (see subsection (5), *supra*), with a minor amendment effected by section 40 (5) of the 1947 Act, applying subsection (6), *supra*, to section 207 as well as to this section. The last-mentioned provision came into force on July 1, 1948.

Compromise or arrangement.—The word "arrangement" should not be limited to something analogous in some sense to "compromise" (*Re Guardian Assurance Co.*, [1917] 1 Ch. 431, C.A.; 10 Digest 1054, 7570). For examples of schemes which have been sanctioned, see 5 Halsbury's Laws (2nd Edn.), pp. 795, 796. The Court cannot sanction any scheme which involves the doing of an act which is *ultra vires* the company (*Re Oceanic Steam Navigation Co., Ltd.*, [1939] Ch. 41; [1938] 3 All E.R. 740; Digest Supp. The effect of the section is to give a scheme, when sanctioned by the Court, a statutory operation (*Re Garner's Motors, Ltd.*, [1937] 1 Ch. 594).

Creditors.—Every person having a pecuniary claim against the company, whether actual or contingent, is a creditor (see e.g., *Re Empire Mining Co.* (1890), 44 Ch.D. 402; 10 Digest 779, 4876 (debenture holders and other secured creditors); *Re Alabama, New Orleans, Texas and Pacific Junction Rail. Co.*, [1891] 1 Ch. 213, C.A.; 10 Digest 1058, 7402 (foreign creditors whose rights are in question in England); *Craig's Claim*, [1895] 1 Ch. 267, C.A.; 10 Digest 1057, 7391 (assignor of lease to company whom company has indemnified under the lease)).

Application to the Court in a summary way.—The application is made by originating summons, (R.S.C., Order 53B, rule 8 (g)). The proposed compromise or arrangement should be exhibited to the affidavit in support. The order directing a meeting to be summoned usually appoints the chairman of the meeting and directs him to report the result of it to the Court. It also gives directions as to advertisements, proxies, etc. For forms, see Ency. Court Forms, title Companies, Vol. 6, pp. 171 *et seq.*

Proxies.—The forms of proxy papers are settled in Chambers. They must be in the special form approved by the Court (see Practice Direction (1896), 40 Sol. Jo. 545; 10 Digest 1058, 7408; Practice Direction, [1910] W.N. 154; 10 Digest 1058, 7409). There is no particular time for lodging proxies for a creditors' meeting (see *Lainière de Roubaix v. Glen Glove and Hosiery Co., Ltd.*, [1926] S.C. 91; Digest Supp.)

The section gives a general right to vote by proxy, using any proper form, and the proxies need not be sent to the company's office before the meeting. Directors who, pursuant to the Court's order, receive proxies are bound to use them (*Re Dorman, Long & Co., Ltd.*, [1934] Ch. 635; Digest Supp.). As to the construction of a proxy, see *Re Waxed Papers, Ltd.*, [1937] 2 All E.R. 481, C.A.; Digest Supp.

Meetings of creditors and members.—The different classes of those affected must have separate meetings (*Sovereign Life Assurance Co. v. Dodd*, [1892] 2 Q.B. 573, C.A.; Digest Supp.). As to the responsibility of determining what creditors are to be summoned as constituting a class, see Practice Note, [1934] W.N. 142; Digest Supp. The members of a class not affected by the scheme need not be sent notice of any meeting (*Re Tea Corporation, Ltd., Sorsbie v. Same Co.*, [1904] 1 Ch. 12, C.A.; 10 Digest 1057, 7395). The Court must be satisfied that the statutory provisions have been complied with, that the classes of creditors or members have been fairly represented by those who attended, and that the statutory majority approving the scheme is acting *bonâ fide* in the interest of the class it professes to represent. The arrangement must also be such as a man of business would reasonably approve, and fair and reasonable as regards the different classes, if any (*Re Alabama, New Orleans, Texas and Pacific Junction Rail. Co.*, *supra*).

Subsection (2) : Sanction by the Court.—The application is by petition under R.S.C., Order 53B, rule 5 (h), and must be supported by affidavit unless otherwise ordered (*ibid.*, r. 3). If there is a winding up by the Court pending, a report may be required from the official receiver (Companies (Winding-up) Rules, 1929, rule 75). The sanction of the meeting is generally obtained before the sanction of the Court, but it is immaterial in what order the sanctions are obtained (*Re Dynevor, Dyffryn and North Abbey Collieries Co.* (1879), 11 Ch.D. 605, C.A.; 10 Digest 1055, 7377). For forms of petition, see Ency. Court Forms, title Companies, Vol. 6, p. 191, Form No. 82.

Definitions.—"Member" (section 26); "contributory" (section 213); "officer who is in default" (section 440 (2)); "company", "memorandum", "officer", "registrar of companies", "the Court" (section 455 (1)).

207. Information as to compromises with creditors and members.—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under the last foregoing section there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company :

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding fifty pounds.

NOTES

The section combines section 40 (1) to (4) and section 41 (1), (3), (4) of the 1947 Act, which came into force on July 1, 1948.

General note.—Section 206 provided for sanction by the Court of compromises or arrangements, and substantially reproduced section 153 of the 1929 Act. As the provision stood under the 1929 Act, it was possible for the Court's sanction to be obtained without the Court being informed on various material points and in particular without knowing what the personal interests were of directors or trustees for debenture-holders who recommended the scheme.

The present section therefore provides that, where a meeting is summoned under section 206 a statement must be sent with the notice convening the meeting (a) explaining the effect of the compromise or arrangement, and (b) stating *any material interests* of the directors (or, where the compromise or arrangement affects the rights of debenture-holders, of the trustees for the debenture-holders) in whatever capacity they hold those interests, and the effect of the compromise or arrangement on those interests, *so far as the effect is different from the effect thereof on the like interests of other persons*. If the notice summoning the meeting is given by advertisement, a statement to the like effect must be included or it must state where and how a creditor or member entitled to attend the meeting may obtain a copy of the statement, which must be furnished to such creditor or member free of charge on application in the manner indicated in the notice. A penalty is imposed on the company and officers if default is made. Directors and trustees are under a duty to give all necessary information with a penalty in default.

Meetings of members and creditors.—See section 206.

Compromise or arrangement.—See section 206.

Trustee for debenture-holders.—A trustee for debenture-holders is in the same fiduciary position as regards the debenture-holders as a director is as regards the members of a company (*Re Magadi Soda Co., Ltd.* (1925), 94 L.J. Ch. 217; Digest Supp.). In the same way, therefore, as the members of a company ought to know how a director's interests are affected by the scheme, so the debenture-holders ought to have the like information as regards the trustees. It should be noted, however, that the directors' interests must also be disclosed, even though the scheme affects debenture-holders.

Definitions.—"Member" (section 26); "arrangement" (section 206 (6)); "company" (section 206 (6), 455 (1)); "officer who is in default" (section 440 (2)); "company", "director", "officer" (section 455 (1)).

208. Provisions for facilitating reconstruction and amalgamation of companies.—(1) Where an application is made to the court under section two hundred and six of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;
- (d) the dissolution, without winding up, of any transferor company ;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement ;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression " property " includes property, rights and powers of every description, and the expression " liabilities " includes duties.

(5) Notwithstanding the provisions of subsection (6) of section two hundred and six of this Act, the expression " company " in this section does not include any company other than a company within the meaning of this Act.

NOTES

The section reproduces section 154 of the 1929 Act.

Amalgamation and reconstruction.—See generally, 5 Halsbury's Laws (2nd Edn.), pp. 790 *et seq.* The terms have no precise legal meaning, but a reconstruction normally entails the transfer of an undertaking to another company, consisting substantially of the same shareholders, with a view to its being continued by the transferee company. Amalgamation is a blending of two or more existing undertakings into one, the shareholders of each company becoming substantially the shareholders in the company which is to carry on the blended undertakings. The question whether a winding up is for the purpose of reconstruction or amalgamation depends upon the whole circumstances of the winding up (*Re South African Supply and Cold Storage Co., Wild v. Same Co.*, [1904] 2 Ch. 268 ; 10 Digest 1016, 7056). See further as to the meaning of these terms, the Trustee Act, 1925, section 10 (3) (c) (20 Halsbury's Statutes 104) and *Re Walker's Settlement, Royal Exchange Assurance Corporation v. Walker*, [1935] Ch. 567, C.A. ; Digest Supp.

Application to the Court.—The application is made by summons in chambers under R.S.C., Order 53B, rule 8 (h). Application must be made *ex parte* by summons in chambers to the judge for directions as to proceedings to be taken (*ibid.*, rule 10). A respondent to such summons is required to enter an appearance (*ibid.*, rule 9). For forms, see Ency. Court Forms, title Companies, Vol. 6, Forms Nos. 90 *et seq.*

Order on application.—The order to be made on any such application may be in the prescribed form (see R.S.C., Appendix L, Form No. 37) with such variations as the circumstances of the case may require (R.S.C., Order 53B, r. 13).

Directions by Court.—The necessary directions by the Court may be included in the order made by the Court on the hearing of the petition to sanction the scheme, but more usually liberty is reserved in that order to apply for further directions as to any of the matters set out in subsection (1), *supra* (*Re Star Tea Co., Ltd.*, [1930] W.N. 4 ; Digest Supp.). For the practice to refer to the registrar for the necessary orders, see Practice Note, [1939] W.N. 121 ; Digest Supp.

Company.—It will be noted that the term “company” has not here the extended meaning given in section 206 (6) (see subsection (5), *supra*).

Transfer of liabilities, etc., of transferor company.—Non-transferable contracts, e.g., contracts of personal service, are not included (*Nokes v. Doncaster Amalgamated Collieries, Ltd.*, [1940] A.C. 1014; [1940] 3 All E.R. 549, H.L.; 2nd Digest Supp.). Income tax benefits as to deductions for wear and tear and losses are not transferred (*United Steel Cos., Ltd. v. Cullington*, [1940] A.C. 812; [1940] 2 All E.R. 170, H.L.; 2nd Digest Supp.).

Definitions.—“Arrangement” (section 206 (6)); “default fine”, “officer who is in default” (section 440); “company”, “debenture”, “officer”, “share”, “the Court” (section 455 (1)); “person” (Interpretation Act, 1889, section 19; 18 Halsbury’s Statutes 1001).

209. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) gives notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question ;

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares :

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression " dissenting shareholder " includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—

- (a) with the substitution, in subsection (1), for the words " the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary) ", of the words " the shares affected " and with the omission of the proviso to that subsection ;
- (b) with the omission of subsection (2) ; and
- (c) with the omission, in subsection (3), of the words " together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company " and of the proviso to that subsection.

NOTES

This section combines section 155 of the 1929 Act and section 11 of the 1947 Act. The latter section came into force on July 1, 1948.

General note.—By the provisions of section 155 of the 1929 Act, power was given to a company on a scheme or contract involving the transfer of its shares to another company, to acquire the shares of dissenting shareholders in certain circumstances. That section, however, limited this power in the following ways: (1) the procedure was not available to a company where it already held more than 10 per cent. of the shares or class of shares which it desired to acquire ; (2) while a company, if it obtained 90 per cent. of the shares or class of shares comprised in a scheme or contract,

could compel the dissenting minority to sell their shares, the dissenting minority had no power to compel the company to acquire the shares held by them, although their position as a small minority in a subsidiary company might be anything but satisfactory; (3) where the transferee company gave notice to a dissenting shareholder of its desire to acquire his shares, failing an order by the Court to the contrary, the transferor company became bound to register the transferee company as the holder of the shares. This amounted to the shares of the dissenting shareholder being transferred without an instrument of transfer being executed and was inconsistent with section 63 of the 1929 Act (now section 75, *ante*), which provided that it should not be lawful for a company to register a transfer of shares unless a proper instrument of transfer had been delivered to the company. These limitations have now been removed.

Effect of changes.—(i) *Percentage required for approval.* In computing the 90 per cent. required for approval of the scheme, any shares already held by, or by a nominee for, the transferee company or its subsidiary are not to be included. (ii) *Procedure for acquiring shares of dissentients.* The procedure is now available even where the transferee company or its nominee already holds more than 10 per cent. of the shares or class of shares it proposes to acquire provided the transferee company offers the same terms to all holders of the shares, or of each class of shares affected and the scheme must be approved by not less than 75 per cent. in number of the holders, holding between them not less than 90 per cent. of the shares affected. (iii) *Notice to dissentients (subsection (2)).* Where shares have been so acquired by a company, with the result that, with shares already held by that company or its nominee, it controls 90 per cent. of those shares or of that class of shares, notice of that fact (if not already given) must be given to any dissenting shareholders within one month of the transfer, and any dissenting shareholder may then require the transferee company to acquire his shares within three months of notice requiring the company to do so. The company must then acquire those shares on the terms on which it acquired those of the approving shareholders or on such other terms as may be agreed or as may be fixed by the Court. (iv) *Instrument of transfer.* Where a transferee company compulsorily acquires shares of dissenting shareholders under this section, an instrument of transfer may be executed on behalf of the shareholder by a person appointed by the transferee company and on its own behalf by the company and the instrument of transfer must be transmitted to the transferor company together with the notice required under subsection (3), *supra*. No instrument of transfer is, however, required for any share for which a share warrant is outstanding.

The new provisions here introduced are not retrospective and will not apply where an offer has been made before the section came into force.

Notice in prescribed manner.—For the form prescribed, see Board of Trade Form No. 100 (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post*).

Terms for acquisition of shares of dissentients.—See generally, note (1) to section 11 in Magnus and Estrin on the Companies Act, 1947. The terms may, in the absence of agreement, be settled by the Court. The Court is not bound to accept the figures given by the company as the price for the acquisition of the shares of a dissenting shareholder (*Re Cashner-Kellner Alkali Co., Ltd.*, [1930] 2 Ch. 349; Digest Supp.) and the power of the Court is not affected by the fact that the transferee company has been amalgamated with a third company (*ibid.*). But the Court will not vary the terms of the scheme or contract unless it is affirmatively established that, notwithstanding the views of a large majority of the shareholders, the scheme is unfair (*Re Evertite Locknuts, Ltd.*, [1945] Ch. 220; [1945] 1 All E.R. 401; 2nd Digest Supp.). The application is by summons, R.S.C., Order 53B, r. 8 (c), S.I. 1948 No. 1756.

Definitions.—"Share warrant" (section 83); "subsidiary" (section 154); "company", "share" "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

Minorities

210. Alternative remedy to winding up in cases of oppression—

(1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, the Board of Trade, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion—

- (a) that the company's affairs are being conducted as aforesaid; and
- (b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In relation to a petition under this section, section three hundred and sixty-five of this Act shall apply as it applies in relation to a winding-up petition, and proceedings under this section shall, for the purposes of Part V of the Economy (Miscellaneous Provisions) Act, 1926, be deemed to be proceedings under this Act in relation to the winding up of companies.

NOTES

The section reproduces section 9 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that, apart from the extended jurisdiction of the Court as to winding up in such cases (see section 225) the Court also has power, without winding up the company, to impose upon the parties to a dispute in a case of oppression of minorities whatever settlement it considers just and equitable. The reason for this is that, in many cases, the winding up of the company would not benefit the minority shareholders since the break-up value of the assets might be small or the only available purchaser might be that very majority whose oppression had driven the minority to seek redress. It will be noted that a petition under this section may be presented either by a member of the company, or by the Board of Trade under section 169. In the case of a petition by a member, it may be presented by him only if he is one of the minority being oppressed.

Application to the Court by petition.—A procedure similar to that in applications under R.S.C., Order 53B, rule 5, would seem to be appropriate. As to the title of the petition, see *ibid.*, rule 4, and see generally as to the form of petition, etc., notes to *ibid.*, rule 5, in the Annual Practice.

Subsection (2).—The subsection applies only where the conditions in paragraphs (a) and (b) are fulfilled. Where the requirements of paragraph (a) are satisfied, but the making of a winding-up order would not unfairly prejudice those members on whose behalf the petition is presented, the provisions of section 225 (2), *post*, will apply. The Court has a discretion as to which order it should make in the circumstances. Any order made must have in view the bringing to an end the matters complained of and it is for that reason that the Court has an unfettered discretion. Although it is not expressly stated, by implication from subsection (3) it is obvious that the Court has power, for this purpose, to alter or add to the company's memorandum or articles.

Alteration of memorandum and articles.—As to alteration of memorandum, see generally, sections 4, 5, 22, 23, 380. As to alteration of articles, see sections 10, 380. Notwithstanding, however, any of these provisions, any alteration or addition which would be inconsistent with the alterations or additions made by order of the Court must be sanctioned by the Court, unless the provisions of the order permit it to be made.

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "articles", "company", "memorandum", "officer", "registrar of companies", "share" (section 455 (1)).

PART V
WINDING UP
(i) PRELIMINARY

Modes of Winding Up

211. Modes of winding up.—(1) The winding up of a company may be either—

- (a) by the court ; or
- (b) voluntary ; or
- (c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

NOTES

The section reproduces section 156 of the 1929 Act.

Winding up.—A registered company can only be extinguished by winding up (see *Reuss (Princess) v. Bos* (1871), L.R. 5 H.L. 176 ; 10 Digest 818, 5331), or in certain cases by being struck off the register without any winding-up proceedings being taken (see, e.g., section 353, *post*). The winding up of a company is a statutory process by which the existence of a company is brought to an end, and this process may be instituted in any one of three ways here indicated. The effect of a winding up is that the company's assets are realised and applied in payment of its liabilities, and the surplus, if any, is then distributed among the members according to their rights and interests in the company (see sections 265, 302). The person appointed for realising the company's assets and distributing the proceeds thereof as provided for by the Act is the liquidator, who, in the case of a winding up by the Court, is generally the official receiver (sections 233, 237).

It should be noted that under section 353 the registrar has power to remove from the register the name of a company which has ceased to carry on business.

Winding up by the Court.—See sections 218 *et seq.*

Voluntary winding up.—See sections 278 *et seq.*

Winding up subject to supervision.—See sections 311 *et seq.*

Provisions applicable to every mode of winding up.—See sections 316 to 365.

Definitions.—" Company ", " the Court " (section 455 (1)).

Contributories

212. Liability as contributories of present and past members.—

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications :—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member ;

- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;
- (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;
- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

NOTES

The section reproduces section 157 of the 1929 Act.

The effect of the section is in general that every present member is liable to contribute to the assets of a company on its being wound up, and with certain reservations, every past member is also so liable (subsection (1)). In all cases, the liability of any member, past or present, is limited in the case of a company limited by shares, to the amount unpaid on the shares, or, in the case of a company limited by guarantee, to the amount undertaken to be contributed by him, while if the last-mentioned company has a share capital, in addition to his liability under guarantee, he may be called upon to contribute up to the nominal value of his shares (*ibid.*, sub-paragraphs (d), (e) and subsection (3)). The liability may also be restricted in certain other events (subsection (1) (f), (g)), and past members cannot be compelled to contribute anything in the conditions mentioned in sub-paragraphs (a), (b) (*ibid.*) It should, however, be noted that persons who are neither past nor present members may be liable as contributories (subsection (2)). As to who is a contributory, see section 213.

Member.—As to the meaning of member, see section 26. In practice, the register of members is resorted to for evidence as to membership (as to which, see section 110), but it should be noted that under section 118 the register is only *prima facie* evidence.

As to the liability of a deceased member, see section 215, and as to the case where a contributory becomes bankrupt, see section 216. For provisions as to married women, see section 217.

Unpaid calls.—Where calls are paid other than in money, what is taken instead must be a proper consideration for the release of the amount due on the call, or it will not amount to payment of the call (*Re White Star Line, Ltd.*, [1938] Ch. 458, C.A.).

Unlimited liability of directors.—See section 203.

Other related provisions.—Settling list of contributories (section 257 and the Companies (Winding-up) Rules 1929, 76, 78, 79, 80, 81, 82, 83); power to make calls (section 260 and *ibid.*, rule 84); liquidator making call, etc. (section 273, but see also *ibid.*, rules 85 to 87); order by Court against contributory (sections 261, 262); power of Court to arrest absconding contributory (section 274); distribution of surplus assets to contributories (section 265); inability to pay debts (section 223).

Definitions.—"Company limited by shares", "company limited by guarantee" (section 1 (2)); "member" (section 26); "contributory" (section 213); "commencement of the winding up" (section 229); "articles", "company", "director" "share", "the Court" (section 455 (1)).

213. Definition of "contributory".—The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

NOTES

The section reproduces section 158 of the 1929 Act.

Contributory.—Every holder of fully paid up shares is a contributory since every member of the company is primarily liable to contribute, subject to the limit of the amount he can be called upon to pay (*Re Anglesea Colliery Co.* (1866), 1 Ch. App. 555; 10 Digest 909, 6215; *Re Aidall, Ltd.*, [1933] Ch. 323, C.A.; Digest Supp.). A holder of fully paid shares will not, however, be placed on the list of contributories, except at his own desire, since he is no longer liable to make any contribution to the assets (*Leifchild's Case* (1865), L.R. 1 Eq. 231; 10 Digest 909, 6214). A person whose shares have been forfeited is not a contributory (*Ladies' Dress Association v. Pulbrook*, [1900] 2 Q.B. 376, C.A.; 9 Digest 431, 2799). As to the nature of a contributory's liability, see section 214. As to set-off by contributory, see section 259, and as to adjustment of rights of contributories, see section 265.

Winding up.—See section 211.

Definitions.—"Company" (section 455 (1), *post*); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

214. Nature of liability of contributory.—The liability of a contributory shall create a debt (in England of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

NOTES

The section reproduces section 159 of the 1929 Act.

Specialty debt.—The period of limitation is twelve years (Limitation Act, 1939, section 2 (3); 32 Halsbury's Statutes 226). The liability to contribute in a winding up is, as in the case of a call made while the company is a going concern, a debt in the nature of a specialty and binds persons liable to be placed on the list of contributories equally with persons registered as members (*Buck v. Robson* (1870) L.R. 10 Eq. 629; 10 Digest 917, 6282). Before liquidation, the liability of shareholders to future calls does not become a debt until a call is made (*Whittaker v. Kershaw* (1890), 45 Ch.D. 320, C.A.; 10 Digest 912, 6235).

Definition.—"Contributory" (sections 213, 455 (1)).

215. Contributories in case of death of member.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.

(3) If in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

NOTES

The section reproduces section 160 of the 1929 Act.

Death of contributory.—A deceased member, or his estate, remains a member for the purposes of the articles of association so long as his name remains on the register without notice to the company of his death (*New Zealand Gold Extraction Co. (Newbery-Vautin Process) v. Peacock*, [1894] 1 Q.B. 622, C.A.; 9 Digest 322, 2039).

Joint holders.—If shares are registered in joint names, and one of the joint holders dies before winding up, his estate is not liable (*Hill's Case* (1875), L.R. 20 Eq. 585; 9 Digest 410, 2635).

Personal representatives.—Personal representatives are not liable unless they are registered with their consent as holders of the shares, in which case they are personally liable and may be placed on the list in their own right, although described as executors in the register (*Duff's Executors' Case* (1866), 32 Ch.D. 301, C.A.; 9 Digest 262, 1624). Personal representatives placed on the list in their representative capacity are only liable to the extent of the assets in their hands properly administered (*Baird's Case* (1870), 5 Ch. App. 725; 9 Digest 405, 2593).

Definitions.—"Contributory" (sections 213, 455 (1)); "company", "the Court" (section 455 (1)).

216. Contributories in case of bankruptcy of member.—If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories,—

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

NOTES

The section reproduces section 161 of the 1929 Act.

Bankruptcy of contributory.—Proofs in respect of future calls and the receipt of a dividend thereon out of the bankrupt's estate do not render the shares fully paid (*Re West Coast Gold Fields, Ltd., Rowe's Trustees' Claim*, [1906] 1 Ch. 1, C.A.; 10 Digest 1004, 6972). If the contributory becomes bankrupt after he has been placed on the list, his name remains on it (*Re Cape Breton Co.* (1881), 19 Ch.D. 77, C.A.; 10 Digest 983, 6788). If, however, adjudication takes place before the commencement of the winding up, he cannot be placed on the list, nor can his trustee if he has disclaimed the shares (*Re West of England Bank, Ex parte Budden and Roberts* (1879), 12 Ch.D. 288; 9 Digest 411, 2641).

Disclaimer by trustee.—See 2 Halsbury's Laws (2nd Edn.), pp. 254-261. If the trustee disclaims the shares, the liquidator can prove in the bankruptcy not only for all calls made before the disclaimer but also for damages caused by the disclaimer (see *Re Hallett, Ex parte National Insurance Co.* (1894), 71 L.T. 408; 4 Digest 304, 2851).

Definitions.—"Contributory" (sections 213, 455 (1)); "company" (section 455 (1)).

217. Provision as to married women.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

NOTE

The section reproduces section 162 of the 1929 Act.

(ii) WINDING UP BY THE COURT

Jurisdiction

218. Jurisdiction to wind up companies registered in England.

—(1) The High Court shall have jurisdiction to wind up any company registered in England.

(2) In the case of a company whose registered office is situate within the jurisdiction of the Chancery Court of the County Palatine of Lancaster or the Chancery Court of the County Palatine of Durham, the palatine court shall have concurrent jurisdiction with the High Court to wind up the company.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the county court of the district in which the registered office of the company is situate shall, subject to the provisions of this section, have concurrent jurisdiction with the High Court to wind up the company.

(4) Where a company is formed for working mines within the stannaries and is not shown to be working mines beyond the limits of the stannaries or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, the court exercising the stannaries jurisdiction shall, whatever may be the amount of the capital of the company and wherever the registered office of the company is situate, have concurrent jurisdiction with the High Court to wind up the company.

(5) The Lord Chancellor may by order made by statutory instrument exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising his powers under this section, the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Court (Abolition) Act, 1896.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

NOTES

The section reproduces section 163 of the 1929 Act, except that in subsection (5) it is now provided that the powers of the Lord Chancellor thereunder are exercisable by statutory instrument.

General note.—The section deals with courts having jurisdiction to wind up registered companies in England. These Courts are: (1) the High Court, which has jurisdiction in all cases, and (2) the Palatine Courts and certain County Courts (including the Stannaries Court) which have concurrent jurisdiction with the High Court in the cases of the companies here set out. As to the winding up of unregistered companies, see Part IX.

High Court.—Under the 1929 Act, provision was made by *ibid.*, section 164 for the exercise of the jurisdiction of the High Court in winding up. That section was repealed by section 96 (1) of the 1947 Act (which came into force on July 1, 1948) and the jurisdiction is now exercised under Part III of the Supreme Court of Judicature (Consolidation) Act, 1925.

Concurrent jurisdiction.—The inferior courts who are given concurrent jurisdiction with the High Court under this section have, *for the purposes of that jurisdiction*, all the powers of the High Court. Thus prohibition will not lie to a county court wrongly exercising this jurisdiction, the remedy being by appeal (*Re New Par Consols, Ltd. (No. 2)*, [1898] 1 Q.B. 669, C.A.; 10 Digest 816, 5316). But as the powers of the High Court are exercisable only for the purposes of that jurisdiction, a County Court cannot issue a writ of *fiat facias* to enforce an order directing payment of money to a liquidator (*Re Bassett's Plaster Co., Ltd.*, [1894] 2 Q.B. 96; 10 Digest 816, 5315), nor can it decide a question as to title to property which arose before the winding up (*Re Ilkley Hotel Co.*, [1893] 1 Q.B. 248; 10 Digest 816, 5314). But it may declare a floating charge invalid and set it aside as a fraudulent preference (*Re Stanton (F. & E.), Ltd.*, [1928] 1 K.B. 464; Digest Supp.).

Registered office.—See section 107 and subsection (8), *supra*.

Companies within the stannaries.—See sections 357 to 359, and generally, 5 Halsbury's Laws (2nd Edn.), pp. 822 *et seq.* The stannaries jurisdiction was transferred to the County Courts of Cornwall by the Stannaries Court (Abolition) Act, 1896, sections 1, 6, and the general practice of the County Court applies (see C.C.R., Order 48, rule 2).

Statutory instrument.—See the Statutory Instruments Act, 1946.

Exclusion of certain county courts.—Under the existing provisions, neither the City of London Court nor any county court within the London bankruptcy jurisdiction have winding-up jurisdiction. Certain county courts outside that area have also been excluded.

Wrong court.—This means inappropriate court and not a court having no jurisdiction (*Re Southsea Garage, Ltd.* (1911), 27 T.L.R. 295; 10 Digest 816, 5313).

Definitions.—"Company", "company within the stannaries", "prescribed", "share", "the Court" (section 455 (1)).

219. Transfer of proceedings from one court to another and statement of case by county court.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

NOTES

The section reproduces section 165 of the 1929 Act.

Transfer of proceedings.—See also the Companies (Winding-up) Rules, 1929, rules 43 *et seq.* *Ibid.*, rule 44 provides that the judge of any court other than the High Court or a Palatine Court may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his court to be transferred

to any court which has jurisdiction to order the winding up of a company, not being the High Court or a Palatine Court. The transfer can only be made to a court which has winding-up jurisdiction (*Re Real Estates Co.*, [1893] 1 Ch. 398; 10 Digest 973, 6718), but the fact that such winding-up jurisdiction is limited is immaterial (*Re Vernon Heaton Co., Ltd.*, [1936] Ch. 289; Digest Supp.). A transfer of proceedings to the High Court will be ordered where a difficult question of law is involved (*Re Laxon & Co.*, [1892] 3 Ch. 31, C.A.; 10 Digest 973, 6715), or where the procedure in the High Court is more suitable to the conduct of the proceedings (*Re Vestal Hosiery Co.* (1922), 91 L.J. Ch. 627; 10 Digest 908, 6204).

Proceedings in wrong court.—For meaning of “wrong court”, see note to section 218. Where a petition has been presented to such Court, the Court may make a winding up order and may at the same time order the proceedings to be transferred to the proper Court (*Re Milford Haven Shipping Co.*, [1895] W.N. 16; 10 Digest 973, 6717), unless they have been wilfully taken in the wrong court, in which case they will be dismissed (*Re Brightmore, Ex parte May* (1884), 14 Q.B.D. 37; 4 Digest 38, 329 (a bankruptcy case)).

Definitions.—“Company”, “the Court” (section 455 (1)).

220. Jurisdiction to wind up companies registered in Scotland.

—(1) The Court of Session shall have jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may, subject to the provisions of this Act, be exercised by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the sheriff court of the sheriffdom in which the registered office of the company is situate shall have concurrent jurisdiction with the Court of Session to wind up the company:

Provided that—

- (a) it shall be lawful for the Court of Session, if it appears to the Court having regard to the amount of the assets of the company expedient to do so, to remit to any sheriff court any petition presented to the Court of Session for winding up any such company or to require any such petition presented to a sheriff court to be remitted to the Court of Session; and
- (b) it shall be lawful for the Court of Session to require that any such petition as aforesaid presented to one sheriff court be remitted to another sheriff court; and
- (c) in a winding up in the sheriff court it shall be lawful for the sheriff court to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

(4) For the purposes of this section, the expression “registered office” means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

NOTE

The section reproduces section 166 of the 1929 Act.

221. Power in Scotland to remit winding up to Lord Ordinary.

—The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary, and where provision is so made, the Lord Ordinary shall, for the purposes of a winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

NOTE

The section reproduces section 167 of the 1929 Act.

Cases in which Company may be wound up by Court

222. Circumstances in which company may be wound up by court.—A company may be wound up by the court if—

- (a) the company has by special resolution resolved that the company be wound up by the court ;
- (b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting ;
- (c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year ;
- (d) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ;
- (e) the company is unable to pay its debts ;
- (f) the court is of opinion that it is just and equitable that the company should be wound up.

NOTES

The section reproduces section 168 of the 1929 Act.

Statutory report : statutory meeting.—See section 130. The petition cannot be presented until the expiration of fourteen days from the last day on which the meeting ought to have been held and can be presented only by a shareholder (see section 224 (1) (b)). See also section 225 (3)).

Incorporation.—The date of incorporation is stated in the certificate of incorporation (see section 13).

Commencement of business.—See section 109.

Reduction of members below minimum.—See section 31. "Members" means actual members, and does not include past members, or representatives of deceased members, or trustees of bankrupt members (*Re Bowling and Welby's Contract*, [1895] 1 Ch. 663, C.A. ; Digest Supp.). As to the position of a person resident outside the scheduled territories, see Exchange Control Act, 1947, section 8 (2). The reduction of members below the legal minimum is the only ground on which a contributory who does not come within proviso (a) (ii) of section 224 (1) may present a petition (see *ibid.*, proviso (a) (i)).

Inability to pay debts.—See section 223.

Just and equitable.—The words are not to be construed *cjusdem generis* with the preceding words of the section (*Loch v. Blackwood (John), Ltd.*, [1924] A.C. 783, P.C. ; Digest Supp.). For cases where it is considered just and equitable that the company be wound up, see *Re Sailing Ship Kentmere Co.*, [1897] W.N. 58 ; 10 Digest 822, 5355 (deadlock owing to internal disputes) ; *Baird v. Lees*, [1924] S.C. 83 ; Digest Supp. (director of private company treating business as his own) ; *Loch v. Blackwood (John), Ltd.*, *supra* (withholding information from shareholders), and see generally, 5 Halsbury's Laws (2nd Edn.), pp. 545-548. For cases where it was not considered just and equitable to make an order, see *Re Cooper (Cuthbert) & Sons, Ltd.*, [1937] Ch. 392 ; [1937] 2 All E.R. 466 ; Digest Supp. ; *Re Anglo-Continental Produce Co., Ltd.*, [1939] 1 All E.R. 99 ; Digest Supp. ; *Re Kitson & Co., Ltd.*, [1946] 1 All E.R. 435, C.A. ; 2nd Digest Supp. ; *Re Eastern Telegraph Co., Ltd.*, [1947] 2 All E.R. 104. See also section 225 (2) as to presentation of petition by members on this ground.

Winding up by Court after commencement of voluntary winding up, etc.—See section 224 (2).

Winding up of unregistered companies.—See Part IX.

Definitions.—"Member" (section 26) ; "private company" (section 28) ; "statutory meeting" ; "statutory report" (section 130) ; "special resolution" (section 141) ; "company" ; "registrar" ; "the Court" (section 455 (1)).

223. Definition of inability to pay debts.—A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor ; or

- (b) if, in England or Northern Ireland, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is return unsatisfied in whole or in part ; or
- (c) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made ; or
- (d) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

NOTES

The section reproduces section 169 of the 1929 Act.

Creditor.—An assignee of part of a debt is not a creditor within the meaning of this provision (*Re Steel Wing Co.*, [1921] 1 Ch. 349 ; 10 Digest 821, 5346), but he may petition as a creditor on other grounds as he is a creditor within the meaning of section 224 (1).

Registered office.—See section 107. If there is no registered office, the demand may be made at the unregistered office (*Re British and Foreign Generating Apparatus Co., Ltd.* (1865), 12 L.T. 368 ; 10 Digest 859, 5766).

Demand under his hand.—In the case of failure to satisfy the statutory demand three weeks must expire thereafter before the presentation of a petition (*Re Catholic Publishing and Bookselling Co., Ltd.* (1864), 2 De G.J. & Sm. 116 ; 10 Digest 819, 5336). Default in complying with a statutory demand of a creditor gives not only him but other creditors and contributories the right to petition for a winding up (*Re Anglesea Island Coal and Coke Co., Ltd., Ex parte Owen* (1861), 4 L.T. 684 ; 10 Digest 820, 5340). Under the Courts (Emergency Powers) Act, 1943, section 1 (2), service of the demand requires leave of the Court.

Disputed debt.—The mere fact that a company has been given unconditional leave to defend under R.S.C., Order 14, does not preclude the Court from making a winding-up order on the ground that the company is unable to pay its debts (*Re Welsh Brick Industries, Ltd.*, [1946] 2 All E.R. 197, C.A.).

Definitions.—"Company", "the Court" (section 455 (1)).

Petition for Winding Up and Effects thereof

224. Provisions as to applications for winding up.—(1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately :

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—
 - (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ; and
- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ; and
- (c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such

security for costs has been given as the courts thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court; and

- (d) in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, a winding up petition may be presented by the Board of Trade.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntarily winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where, under the provisions of this Part of this Act, any person as being the husband of a female contributory is himself a contributory and a share has, during the whole or any part of the six months mentioned in paragraph (ii) of proviso (a) to subsection (1) of this section, been held by or registered in the name of the wife or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

NOTES

The section reproduces section 170 of the 1929 Act, except for proviso (d) of subsection (1), which enables the Board of Trade to present a petition consequent on proceedings on an inspector's report under section 169. The latter provision as constituting a ground for presenting a petition is consequential on section 169 (3), *ante*, re-enacting section 44 (1) of the 1947 Act, which came into force on December 1, 1947.

The effect of the section is to limit the right of a contributory to petition for a winding-up order in certain conditions (subsections (1), (3)), and in the case where the creditor is the petitioner to require him *inter alia* to establish a *prima facie* case for winding up "to the satisfaction of the Court" (subsection (1) (c)).

The official receiver may also present a petition for a winding-up order in certain cases (subsection (2)), as may also the Board of Trade (subsection (1) (d)). The latter provision is new. For forms of petition for winding up, see Ency. Court Forms, title Companies, Vol. 6, pp. 271 *et seq.*

Petition by company.—See section 222 (a). Where the articles entrust the management of a company to the directors, the directors are not entitled to present a petition to wind up the company (*Re Galway and Salthill Tramways Co.*, [1918] 1 I.R. 62). See also *Smith v. Manchester (Duke)* [1883], 24 Ch.D. 611.

Contributory.—See section 213. A holder of fully paid shares may be a contributory (*Re National Savings Banks Association* (1866), 1 Ch. App. 547; 10 Digest 838, 5493), but the holder of a share warrant to bearer is not (*Re Wala Wynaad Indian Gold Mining Co.* (1882), 21 Ch.D. 849; 10 Digest 836, 5476).

A member who is in arrears with his calls is rarely allowed to petition unless those arrears are first paid (*Re Crystal Reef Gold Mining Co.*, [1892] 1 Ch. 408).

Powers of the Court on hearing a petition.—See section 225.

Voluntary winding up.—See sections 278 *et seq.*

Winding up subject to supervision.—See sections 311 *et seq.*

Definitions.—"Member" (section 26); "private company" (section 28) "statutory meeting", "statutory report" (section 130); "contributory" (section 213); "official receiver" (section 233); "company", "registrar", "share", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

225. Powers of court on hearing petition.—(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion,—

(a) that the petitions are entitled to relief either by winding up the company or by some other means ; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up ;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may—

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

NOTES

The section combines section 171 of the 1929 Act and section 90 of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of change.—Where a petition for winding up is presented by members as contributories on the ground that it is just and equitable that the company be wound up, the Court may make a winding-up order, notwithstanding the existence of an alternative remedy. It will be noted that where the Court is of opinion that (a) the petitioners are entitled to relief and that such relief could take the form of winding up or could take some other form and (b) *if no other remedy were available*, it would be just and equitable that the company be wound up, all things being equal, the Court *must* make a winding-up order. But if some other remedy is available and the Court is of opinion that the petitioners are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy, a winding-up order may be refused. It should be noted that subsection (2) only deals with petitions by members of the company as contributories.

As to rules under the 1929 Act, see Companies (Winding-Up) Rules, 1929, rr. 32, 33, 34, 35, 36, and in the event of a winding-up order being made, see *ibid.*, rr. 37, 38, 41, and sections 230 to 232, *post*.

Absence of assets.—Absence of assets is no ground for refusing an order (*Re Clandoen Colliery Co.*, [1915] 1 Ch. 369 ; 10 Digest 844, 5552).

Costs.—As to costs of petition, see Supreme Court of Judicature (Consolidation) Act, 1925, section 50 ; R.S.C., Order 65, rule 1, and generally, 5 Halsbury's Laws (2nd Edn.), pp. 567 *et seq.*

Just and equitable.—See section 222, *ante*.

Default in delivering statutory report, etc.—See sections 222 (b), 224 (1), proviso (b).

Definitions.—"Member" (section 26) ; "statutory meeting", "statutory report" (section 130) ; "contributory" (section 213), "company", "registrar", the Court" (section 455 (1)).

226. Power to stay or restrain proceedings against company.—

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein ; and

(b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ; and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

NOTES

The section reproduces section 172 of the 1929 Act.

The effect of the section is to give the Court discretionary power, on the application of the company, or a creditor, or a contributory, to restrain proceedings against the company. That power may be exercised at any time in the interval between the presentation of a petition and the making of the winding-up order.

Stay of proceedings.—See 5 Halsbury's Laws (2nd Edn.), pp. 713 *et seq.*

Other related provisions.—Section 228 (limitation of the discretion of the Court in certain cases); section 252 (power to apply to Court for a decision on claims); section 267 (order as to expenses); sections 396, 402 (restraining action against a company registered under Part VIII); sections 231, 397, 403 (peremptory stay of proceedings after a winding-up order under Part VIII); section 404 (powers of the liquidator in the case of unregistered companies).

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)).

227. Avoidance of dispositions of property, etc., after commencement of winding up.—In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

NOTES

The section reproduces section 173 of the 1929 Act.

Commencement of the winding up.—See section 229.

Disposition of property.—Transactions *bonâ fide* entered into in the ordinary course of trade are not affected, so long as they are completed and do not still remain in contract at the date of the winding-up order (*Re Wiltshire Iron Co., Ex parte Pearson* (1868), 3 Ch. App. 443; 10 Digest 864, 5834).

Transfer of shares.—See generally, sections 73 to 85 and First Schedule, Table A, Part I, articles 22 to 28. As between the parties to it, the validity of the transfer is not affected (*Re Onward Building Society*, [1891] 2 Q.B. 463, C.A.; 9 Digest 398, 2543), but the Court will not alter the register to give effect to it except for the benefit of the company and those interested in its assets (*ibid.*). A transfer made after the presentation of the petition is not avoided unless or until a winding-up order is made (*Re Tumacacori Mining Co.* (1874), L.R. 17 Eq. 534; 9 Digest 663, 4419).

Alteration in status of members.—An alteration occasioned by a transfer sanctioned by the Court is not affected (*Taylor, Phillips and Richards' Cases*, [1897] 1 Ch. 298, C.A.; 9 Digest 398, 2541). An option exercised by preference shareholders to convert their shares into ordinary shares does not effect an alteration in their status and the conversion becomes effective without an order of the Court (*Re Blaina Colliery Co., Ltd.* (1926), 70 Sol. Jo. 404; Digest Supp.).

Winding up under supervision is deemed, for the purposes of this section, to be a winding up by the Court (section 313).

Unless the Court otherwise orders.—The Court has no power to make an order under this section before a winding-up order has been made, even though a petition has already been presented (*Re Miles Aircraft, Ltd.* [1948] Ch. 188).

Definitions.—"Member" (section 26); "company", "share", "the Court" (section 455 (1)).

228. Avoidance of attachments, etc., in case of English company and in case of effects in England of Scottish company.—(1) Where any company registered in England is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situated in England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.

NOTES

The section reproduces section 174 of the 1929 Act.

Attachment or execution.—See sections 325, 326, *post.*

Void to all intents.—No interest in any of the goods of the company seized is acquired, even against third persons (*Re Artistic Colour Printing Co., Ex parte Fourdriner* (1882), 21 Ch.D. 510, C.A.; 10 Digest 964, 6614). But where assets

are charged to debenture-holders for more than their value, they cease to be assets of the company and a distress may prevail against the debenture-holders (*Re New City Constitutional Club Co., Ex parte Purcell* (1887), 34 Ch.D. 646, C.A. ; 10 Digest 759, 4742).

Distress.—If the landlord is a creditor of the company, he cannot after the commencement of the winding up distrain for rent accrued due before the winding up, but must prove for his debt (*Thomas v. Patent Lionite Co.* (1881), 17 Ch.D. 250, C.A. ; 10 Digest 968, 6650). But if he is not a creditor, he may distrain for rent accrued due before or during the winding up (see *Re Regent United Service Stores* (1878), 8 Ch.D. 616, C.A. ; 10 Digest 968, 6656). A distress levied before the winding up commenced, although not completed by sale, makes the landlord a secured creditor, and the distress may proceed unless the liquidator pays the debt (*Re Roundwood Colliery Co., Lee v. Roundwood Colliery Co.*, [1897] 1 Ch. 373, C.A. ; 10 Digest 964, 6616). Similarly, a distress for rates levied before the winding up commenced is allowed to proceed unless the liquidator pays the rates (*Re London Dry Docks Corporation* (1888), 39 Ch.D. 306, C.A. ; 10 Digest 1053, 7364).

Commencement of the winding up.—See section 229.

Winding up under supervision is deemed, for the purposes of this section, to be a winding up by the Court (section 313).

Definition.—"Company" (section 455 (1)).

Commencement of Winding Up

229. Commencement of winding up by the court.—(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

NOTES

The section reproduces section 175 of the 1929 Act.

General note.—The date of commencement of a winding up by the Court is important for various reasons. Among the immediate effects of such an order are that the official receiver becomes the provisional liquidator with full powers (sections 239, 243, 245) ; a statement of affairs has to be submitted to him (section 235), and he also has to report thereon (section 236). Dispositions of property, etc., after the commencement of the winding up are in general void (section 227), as are also executions, attachments, etc. (section 228). Generally, the business of the company is terminated as a going concern (section 245 (1)) ; but note that the liquidator may carry on the business so far as may be necessary for the beneficial winding up (*ibid.*, subsection (1) (b)). He can also enforce contracts before the winding up commenced in certain cases (*Mersey Steel and Iron Co. v. Naylor, Benzon & Co.* (1884), 9 App. Cas. 434, H.L. ; 10 Digest 940, 6446 ; but see now, sections 320–326, *post*).

Other immediate effects of a winding-up order are—stay of proceedings (section 231) ; disclaimer of contracts and property (section 323) ; restriction on rights of execution creditors (section 325). The date of commencement of the winding up is also in some cases the relevant date for determining whether a creditor has a preferential claim (see section 319).

Resolution.—See section 141.

Presentation and hearing of petition.—See sections 222, 225.

Voluntary winding up.—See section 280 ; and for other provisions applicable to every winding up, see sections 316–319.

Consequences of Winding-up Order

230. Copy of order to be forwarded to registrar.—On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

NOTE

The section reproduces section 176 of the 1929 Act.

General note.—For the rules under the 1929 Act, see Companies (Winding-Up) Rules, 1929, rules 37 to 41.

231. Actions stayed on winding-up order.—When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

NOTES

The section reproduces section 177 of the 1929 Act.

The effect of the section is that after a winding-up order has been made, any further proceedings against the company are stayed unless the Court otherwise directs. See also section 226.

Winding-up order.—See section 225. As to supervision orders, see section 315.

Provisional liquidator.—See section 238.

232. Effect of winding-up order.—An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

NOTE

The section reproduces section 178 of the 1929 Act. See generally, as to the effect of a winding-up order, note to section 229.

Official Receiver in English Winding Up

233. Official receiver in bankruptcy to be official receiver for winding-up purposes.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" means the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled "the official receiver".

NOTES

The section reproduces section 179 of the 1929 Act.

General note.—The official receiver is an officer of the Board of Trade whose duty it is, if attached to the Court for bankruptcy purposes, to act in liquidations. The Board of Trade has the power to appoint another officer for that purpose in certain cases. It should be noted, however, that under section 234 the Court may appoint some other officer if it is more convenient and economical. As to provisions where a person other than the official receiver is appointed, see section 240.

As to the general duties of the official receiver in winding up, see section 239, and as to his power to appoint a special manager, see section 263.

234. Appointment of official receiver by court in certain cases.—If, in the case of the winding up of any company by the court in England, it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the person who would by virtue of the last foregoing section be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

NOTES

The section reproduces section 180 of the 1929 Act, but its application was extended by section 122 (7) and the Eighth Schedule to the 1947 Act. For the purpose of this section, the last-mentioned provisions came into force on July 1, 1948.

The section enables, e.g., the High Court to appoint the official receiver attached to a County Court circuit in a case where the details of the liquidation can most conveniently be carried out locally.

235. Statement of company's affairs to be submitted to official receiver.—(1) Where the court in England has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been officers of the company ;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date ;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required ;
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression " the relevant date " means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.

NOTES

The section reproduces section 181 of the 1929 Act, except for an amendment made by section 122 (4) and the Seventh Schedule to the 1947 Act in subsection (2) as to the persons liable under that subsection. The amendment effected by the 1947 Act here mentioned came into force on December 1, 1947. The effect of the section has not been altered.

Winding-up order.—See section 225.

Provisional liquidator.—See section 238.

Statement of affairs.—The submission of a statement of affairs in the prescribed form and as required by the present section is one of the consequences of a compulsory winding-up order (as to which, see also section 229). Under the 1929 Act, rule 50 of the Companies (Winding-up) Rules, 1929, applies. The statement must be verified in the manner required (subsection (2)) and show the appropriate particulars as mentioned in subsection (1). The persons who are responsible for preparing and submitting the statement are mentioned in subsection (2), and any reasonable costs in preparation may be recovered in certain cases (subsection (4)) (see also the Companies (Winding-up) Rules, 1929, rule 54). The persons there stated may be called upon to give information connected with the statement of affairs (*ibid.*, r. 52). Any refusal is a contempt of Court (*Re New Par Consols*, [1898] 1 Q.B. 573; 10 Digest 868, 5881. Before committing such person for contempt, however, the winding-up Judge must be satisfied that the person required to make the statement had the materials for so doing (*Re Columbian Gold Mines* (1894), 42 W.R. 624; 10 Digest 869, 5883). While the statement in the first place has to be submitted to the official receiver, creditors and contributories are also entitled to a copy thereof, etc. (subsection (6)), but it should be noted that it is a contempt of Court to make a false statement in that connection (subsection (7), cf., Bankruptcy Act, 1914, section 14 (4)). As to the period within which the statement must be submitted, see subsection (3), and note also the Court's power to overrule the official receiver as to an extension of time (*ibid.*) (see also Companies (Winding-up) Rules, 1929, rules 51, 55).

Court in England.—As to the position in Scotland, see section 269.

Prescribed form.—For the form under the 1929 Act, see the Companies (Winding-up) Rules, 1929, rule 50, Form No. 22.

Relevant date.—See subsection (8), *supra*.

Other related provisions.—Sections 222, 223, 232 (petition by creditors); section 236 (official receiver's report); section 240 (information by liquidator to official receiver); section 270 (public examination of directors and officers); section 316 (proof of debts); section 317 (application of bankruptcy rules); section 318 (ranking of claims in Scotland); section 319 (preferential payments); section 320 (fraudulent preference); section 322 (floating charges); section 325 (execution creditors).

Definitions.—"Contributory" (section 213); "official receiver" (section 233); "company", "director", "officer", "prescribed", "the Court" (section 455 (1)); "secretary" (First Schedule, Table A, Part I, article 1); "person" (Interpretation Act, 1889, section 19); "writing" (*ibid.*, section 20).

236. Report by official receiver.—(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section two hundred and seventy of this Act.

NOTES

The section reproduces section 182 of the 1929 Act, except as to an amendment in subsection (2) effected by section 122 (4) and the Seventh Schedule of the 1947 Act, as to the persons liable under that subsection and an amendment in subsection (3) consequential on the repeal of section 217 of the 1929 Act by section 123 (3) and the

Ninth Schedule to the 1947 Act. The amendments effected by the 1947 Act here mentioned came into force on December 1, 1947. The effect of the section has not been altered.

General note.—A duty is imposed on the official receiver to report to the Court as regards the matters mentioned in subsection (1). The further reports mentioned in subsection (2) are, however, discretionary, and normally the need for such reports would not arise unless the official receiver is of the opinion that further inquiry is desirable (*ibid.*) with a view to a public examination (subsection (3)). The powers of the Court under subsection (3) are now confined to section 270 (re-enacting section 216 of the 1929 Act). For the corresponding provision of the 1929 Act, the powers of the Court under *ibid.*, section 217, also arise. That section empowered the Court to disqualify fraudulent persons in England from managing companies. In view of the wider powers now conferred by section 188, that provision was repealed as above mentioned. The power of the Court under section 188, *ante*, will, of course, be exercisable if fraud is proved, but they are not now exercisable under this section.

Winding-up order.—See sections 225, 232.

Definitions.—"Official receiver" (section 233); "company", "officer", "the Court" (section 455 (1)).

Liquidators

237. Power of court to appoint liquidators.—For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

NOTES

The section reproduces section 183 of the 1929 Act.

Other related provisions.—Section 238 (provisional liquidator); section 239 (appointment and style of liquidator); section 240 (appointment of liquidator other than official receiver); section 242 (appointment of more liquidators than one); section 335 (disqualifications for appointment as liquidator). See also Companies (Winding-up) Rules, 1929, rules 50, 56.

238. Appointment and powers of provisional liquidator.—(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) Where the proceedings are in England, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where the proceedings are in Scotland, the appointment of a provisional liquidator may be made at any time before the first appointment of liquidators.

(4) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

NOTES

The section reproduces section 184 of the 1929 Act.

Provisional liquidator.—See generally 5 Halsbury's Laws (2nd edn.) pp. 573 *et seq.* The function of a provisional liquidator is to act until the winding-up order is made, and his duty is, therefore, to protect the assets (see also *Re London Dry Docks Corporation* (1888), 32 Ch. D. 306, per FRY, L. J., at p. 314; 10 Digest 867, 5857). For that purpose, the Court may define his powers (subsection (3)). A person other than the official receiver is occasionally appointed (*Re Unionist Club, Ltd.*, [1891] W. N. 64; 10 Digest 867, 5855), but the almost invariable rule is to appoint the official receiver (*Re North Wales Gunpowder Co.*, [1892] 2 Q. B. 220, C. A.; 10 Digest 868, 5872). A provisional liquidator is not entitled to appear on the hearing of the petition (*Re General International Agency Co., Ltd.* (1865), 36 Beav. 1; 10 Digest 851, 5657). It is doubtful how far it is necessary to serve him with proceedings in the winding up (*Re Cambrian Junction Rail. Co., Ex parte Coleman* (1849), 3 De G. & Sm. 139).

Other related provisions.—Section 231 (stay of proceedings on appointment); section 235 (statement of affairs); section 240 (notification of appointment); section 243 (custody of company's property); section 263 (appointment of special manager); section 268 (private examinations after appointment). See also Companies (Winding-up) Rules, 1929, rule 31.

Definitions.—Official receiver (section 233); "the Court" (section 455 (1)).

239. Appointment, style, etc., of liquidators in England.—The following provisions with respect to liquidators shall have effect on a winding-up order being made in England:—

- (a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such ;
- (b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver ;
- (c) the court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit ;
- (d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company ;
- (e) the official receiver shall by virtue of his office be the liquidator during any vacancy ;
- (f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of “ the liquidator ”, and, where the official receiver is liquidator, by the style of “ the official receiver and liquidator ”, of the particular company in respect of which he is appointed and not by his individual name.

NOTES

The section reproduces section 185 of the 1929 Act.

General note.—Section 238 provides for the appointment of a provisional liquidator after the presentation of a winding-up petition. In such case, either the official receiver or some other person may be appointed (see the notes to that section). The present section applies after a winding-up order has been made. In such case, the Court cannot appoint a provisional liquidator other than the official receiver, who then becomes *ipso facto* provisional liquidator. The provisions of paragraph (a) are immediate in their effect, and are, therefore, protective in character (see sections 233, 234, and section 245). For other effects of a winding-up order, see section 229. Provision is made for a person other than the official receiver to act as permanent liquidator (paragraphs (b), (c)), but until that appointment is made, the official receiver continues to act (paragraph (a)), as he must also do in the event of any vacancy, e.g., resignation, removal or death (paragraph (e)). If a permanent liquidator is not appointed by the Court the official receiver acts as such (paragraph (d)). The official receiver as provisional liquidator has, after the winding-up order, the powers of a permanent liquidator with reference to settling a list of contributories and probably most, if not all, of the powers of a permanent liquidator (*Re English Bank of the River Plate*, [1892] 1 Ch. 391 ; 10 Digest 868, 5878).

Meeting of creditors and contributories.—For the rules under the 1929 Act, see Companies (Winding-Up) Rules, 1929, rule 127 (notice of meetings) ; rule 129 (place of meeting) ; rule 130 (costs) ; rule 131 (chairman at meeting) ; rule 135 (adjournment of meeting) ; rule 136 (quorum) ; rule 133 (resolutions) ; rule 143 (minutes) ; rules 138, 139, 140, 142, rr. 144 to 154 (proxies and voting). See also section 339 as to a proxy form being exempt from stamp duty. As to representation of corporations at meetings, see section 139, and for appointment of committee of inspection, see section 252.

Other related provisions.—Sections 241, 242 (appointment and removal of liquidators, and provisions as to liquidators in Scotland) ; section 263 (appointment of special manager). See also Companies (Winding-up) Rules, 1929, rules 165, 166, 178.

Definitions.—“ Contributory ” (section 213) ; “ official receiver ” (section 233) ; “ company ”, “ the Court ” (section 455 (1)).

240. Provisions where person other than official receiver is appointed liquidator.—Where, in the winding up of a company by the court in England, a person other than the official receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade ;
- (b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

NOTES

The section reproduces section 186 of the 1929 Act.

General note.—Under section 239 (b) the creditors and contributories may resolve that a person other than the official receiver act as liquidator. If the Court makes an order to that effect (*ibid.*, paragraph (c)), then the person so appointed must comply with the requirements of the present section. For the rules under the 1929 Act, see the Companies (Winding-Up) Rules, 1929, rr. 56 to 58. As to the prescribed form, see Board of Trade Form No. 39 (S.R. & O. 1929 No. 823, Schedule, see Appendix V, *post*).

Winding up by Court.—See section 222.

Other related provisions.—Sections 237, 238, 239 (appointment of liquidator); section 241 (provisions as to liquidators in Scotland).

Definitions.—"Official receiver" (section 233); "book", "company", "document", "officer", "prescribed", "registrar of companies", "the Court" (section 455 (1)).

241. Provisions as to liquidators in Scotland.—The following provisions with respect to the liquidators shall have effect in a winding up by the court in Scotland :—

- (a) the court may determine whether any and what security is to be given by a liquidator on his appointment ;
- (b) a liquidator shall be described by the style of "the official liquidator" of the particular company in respect of which he is appointed and not by his individual name ;
- (c) where an order has been made for winding up a company subject to supervision and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

NOTE

The section reproduces section 187 of the 1929 Act.

242. General provisions as to liquidators.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section three hundred and thirty-five of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

NOTES

The section reproduces section 188 of the 1929 Act.

Registration of liquidator.—For the procedure under the 1929 Act, see Companies (Winding-Up) Rules, 1929, rule 165.

Removal of liquidator.—See also sections 248, 251, 304. Where a liquidator insists on an action contrary to the wishes of the majority of creditors where there is a deficiency of assets, this has been held to be sufficient grounds for removing him (*Re Eylon (Adam), Ltd., Ex parte Charlesworth* (1887), 36 Ch.D. 299, C.A.; 10 Digest 886, 6028). He is also deemed to be removed if a receiving order in bankruptcy is made against him (Companies (Winding-Up) Rules, 1929, rule 166), but he is deemed not to have vacated his office if the receiving order is rescinded (*Re Newman, Ex parte Official Receiver*, [1899] 2 Q.B. 587; 4 Digest 235, 2217).

Remuneration of liquidator.—The Court will not interfere in the matter of assessing the proportion of remuneration in the case of joint liquidators (*Re Langham Hotel Co., Ex parte Liquidator* (1869), 20 L.T. 163; 10 Digest 882, 5994). See also Companies (Winding-up) Rules, 1929, rules 157, 191. As to disallowance of liquidator's remuneration, see section 248 (2).

Vacancy in office of liquidator.—As to the official receiver acting during a vacancy, see section 239. As to filling of vacancy by the official receiver, see Companies (Winding-up) Rules, 1929, rule 56 (7).

More than one liquidator appointed.—The Court can give the conduct of any particular matter or matters arising in a liquidation to one or more of several liquidators (*Re Midland Law and Investment Corporation*, [1887] W.N. 58; 10 Digest 874, 5932). As to powers of joint liquidators in a voluntary winding up, see section 303 (3).

243. Custody of company's property.—(1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

NOTES

The section reproduces section 189 of the 1929 Act.

Winding-up order.—See section 225.

Provisional liquidator.—See section 238.

Property, etc., to which company is entitled.—As to what is comprised in this term, see *Re Capital Fire Insurance Association* (1883), 24 Ch.D. 408, at p. 420, C.A.; 10 Digest 863, 5825. For the position under the 1929 Act, see also the Companies (Winding-up) Rules, 1929, rule 164.

Application of assets.—See section 257.

Definitions.—"Company", "the Court" (section 455 (1)).

244. Vesting of property of company in liquidator.—Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

NOTES

The section reproduces section 190 of the 1929 Act.

Vesting order.—The effect of a vesting order is that the property vests in the liquidator not in his personal but in his official character, so that he is not liable

personally to burdens thereon (*Graham v. Edge* (1888), 20 Q.B.D. 683, C.A. ; 10 Digest 1097, 7688). The application is by summons, see Companies (Winding-up) Rules, 1929, rule 8 (2), and for forms, see Ency. Court Forms, title Companies, Vol. 6, p. 415, Form No. 416. The vesting order may be made *ex parte* in exceptional circumstances, *Re Albion Mutual Permanent Building Society* (1888), 57 L.J.Ch. 248 ; 10 Digest 1097, 7690.

245. Powers of liquidator.—(1) The liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection,—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company ;
- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof ;
- (c) to appoint a solicitor to assist him in the performance of his duties ;
- (d) to pay any classes of creditors in full ;
- (e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable ;
- (f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

- (a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels ;
- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal ;
- (c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors ;
- (d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;
- (e) to raise on the security of the assets of the company any money requisite ;
- (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a

contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself ;

(g) to appoint an agent to do any business which the liquidator is unable to do himself ;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland, the court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (a) or paragraph (b) of subsection (1) of this section without the sanction or intervention of the court.

(5) In a winding up by the court in Scotland, the liquidator shall, subject to general rules, have the same powers as a trustee on a bankrupt estate.

NOTES

The section reproduces section 191 of the 1929 Act.

General note.—The section defines the powers of a liquidator in a winding up by the Court. The powers conferred by subsection (1) are exercisable only with the sanction of the Court or of the committee of inspection, while those conferred by subsection (2) are exercisable without such sanction. In all cases, however, the exercise of a liquidator's powers are subject to the control of the Court (see subsection (3)). As to general rules governing exercise of powers, see sections 246, 273. For forms of application, see *Ency. Court Forms*, Vol. 6, title Companies, pp. 389 *et seq.*

Sanction of committee of inspection.—As to the committee of inspection, see section 253. As to the position where there is no committee of inspection, see section 254.

Sanction of Court.—An order in general terms giving the liquidator power to do all acts without the previous sanction or interference of the Court may be made (*Re Rochdale Property and General Finance Co.* (1879), 12 Ch.D. 775 ; 10 Digest 877, 5951).

Litigation by liquidator.—Prior sanction should be obtained to bring or defend proceedings, although it may be given subsequently, and express sanction should be obtained to the employment of a particular solicitor (*Re London Metallurgical Co.*, [1897] 2 Ch. 262 ; 10 Digest 878, 5961). Sanction is not required to bring or defend proceedings in the winding up (*Re Silver Valley Mines* (1882), 21 Ch.D. 381, C.A. ; 10 Digest 885, 6025).

Employment of solicitor.—If the liquidator wishes to employ a solicitor of whom the committee of inspection disapprove, he should consult the creditors and contributories and if they approve, he should apply to the Court, after giving notice to the committee (*Re Consolidated Diesel Engine Manufacturers, Ltd.*, [1915] 1 Ch. 192 ; 10 Digest 880, 5975). A partner of the liquidator may be appointed only if he consents to act without remuneration (*Re Universal Private Telegraph Co.* (1870), 23 L.T. 884 ; 10 Digest 880, 5976).

Compromise or arrangement.—See generally, section 206. As to exercise of powers in winding up subject to supervision, see section 315.

Drawing, acceptance, etc., of bill of exchange.—See *Smith, Fleming & Co.'s Case, Gledstones & Co.'s Case* (1866), 1 Ch. App. 538 ; 10 Digest 881, 5985.

Raising money on security of assets.—This power cannot be exercised to the prejudice of debenture-holders (*Re Regent's Canal Ironworks Co., Ex parte Grissell* (1875), 3 Ch.D. 411, C.A. ; 10 Digest 955, 6547).

Other related provisions.—Section 240 (inspection of books, etc., by official receiver) ; section 246 (control of liquidator's powers) ; section 250 (control of Board of Trade over liquidator) ; section 333 (proceedings, etc., against liquidator) ; section 337 (enforcement of duty of liquidator to make returns). See also Companies (Winding-up) Rules, 1929, rules 76, 77, 109, 211, 213.

246. Exercise and control of liquidator's powers in England.—

(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to over-ride any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

NOTES

The section reproduces section 192 of the 1929 Act.

The effect of the section is that a liquidator's conduct may be controlled either by the creditors or contributories, or by the committee of inspection (subsection (1)). It should be noted, however, that the committee of inspection may be overruled by the creditors or contributories (*ibid.*), although the Court may intervene in any matter on application being made (subsections (3), (5)).

Liquidator's appointment.—See section 239.

Winding up by Court.—See section 222.

Committee of inspection.—See section 253.

Administration of the assets.—See section 245.

Meetings of creditors or contributories.—See section 239 (appointment of liquidator); section 252 (appointment of committee of inspection); section 346 (meetings to ascertain wishes of creditors and contributories).

Other related provisions.—Section 240 (Board of Trade investigation); section 250 (Board of Trade's control over liquidator); section 333 (proceedings against liquidators); section 337 (duty to make returns). For the rules under the 1929 Act relevant to these matters, see the Companies (Winding-up) Rules, 1929, rules 5 to 8, 141 to 154, 196, and 213.

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)); "writing" (Interpretation Act, 1889, section 20; 18 Halsbury's Statutes 1001).

247. Books to be kept by liquidator in England.—Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

NOTES

The section reproduces section 193 of the 1929 Act.

General note.—The books which had to be kept under The Companies (Winding-up) Rules, 1929 were—Record Book (r. 169), Cash Book (r. 170), Trading Account (r. 174). It is not likely that these rules will be substantially changed.

Other related provisions.—Section 240 (inspection of books); section 340 (books as evidence); section 341 (disposal of books). For the rules under the 1929 Act as to the audit of a liquidator's accounts, see the Winding-up Rules, rules 170, 172 to 177, and Forms Nos. 86 to 89. It is unlikely that any substantial change will be made in either the rules or the forms except that a minor amendment may be required in rule 176 (as to which, see section 249).

Definitions.—"Contributory" (section 213); "agent", "company", "prescribed", "the Court" (section 455 (1)).

248. Payments of liquidator in England into bank.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

NOTES

The section reproduces section 194 of the 1929 Act. The effect of the section is to provide for the banking arrangements with regard to any money under the control of the liquidator. The section is supplemented by sections 339 (exemption from stamp duty on cheques), 343 (unclaimed assets), and 361 (investment of funds). The corresponding rules and forms under the Companies (Winding-up) Rules, 1929, were—rules 167, 168, 171, 196, 200, 201 and *ibid.*, Forms, Nos. 82, 84, 85. It is not likely that any substantial change will be made in either the rules or forms.

Companies Liquidation Account.—See section 360.

Carrying on business.—See section 245.

Winding up by the Court.—See section 222.

Committee of inspection.—See section 253.

Improper retention of moneys.—Cf., the analogous provision of the Bankruptcy Act, 1914, section 89 (5) (1 Halsbury's Statutes 675). The interest to be paid under this provision belongs to the estate and not to the Treasury (*Re Sims, Ex parte Official Receiver*, [1907] 2 K.B. 36; 4 Digest 220, 2057 (a bankruptcy case)).

Subsection (3).—Neither may the liquidator advance any of the moneys coming into his hands as liquidator, either by loan or otherwise (*Re Anon.* (1866), 15 L.T. 170; 10 Digest 877, 5955).

Definitions.—"Contributory" (section 213); "company", "prescribed", "the Court" (section 455 (1)).

249. Audit of liquidator's accounts in England.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory :

Provided that the Board may in any case dispense with compliance with this subsection.

NOTES

The section reproduces section 195 of the 1929 Act except as to a minor amendment in subsection (4), (5), effected by section 97 (4), (5) of the 1947 Act as regards inspection and circularisation of the liquidator's audited accounts. The latter provisions came into force on July 1, 1948.

Effect of changes.—Under the 1929 Act, filed copies of the liquidators audited accounts were open to the inspection of creditors and contributories or of any person interested. That requirement was amended by the 1947 Act to provide for inspection by any person interested on payment of a prescribed fee (see subsection (4), *supra*). The duty of sending the accounts to every creditor and contributory is placed upon the liquidator instead of on the Board of Trade, as formerly (see subsection (5), *supra*). This provision will call for a corresponding amendment in the Companies (Winding-up) Rules, 1929, rule 176.

Prescribed form.—For the forms under the 1929 Act, see Companies (Winding-up) Rules, 1929, Forms Nos. 86 to 89.

Books kept by liquidator.—See section 247.

Definitions.—"Contributory" (section 213) ; "company", "prescribed", "the Court" (section 455 (1)) ; "person" (Interpretation Act, 1889, section 19 ; 18 Halsbury's Statutes 1001).

250. Control of Board of Trade over liquidators in England.—

(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

NOTES

The section reproduces section 196 of the 1929 Act.

The effect of the section is that the Board of Trade have power to control the conduct of the liquidator and to investigate the records kept by him.

Powers of the liquidator.—See section 245.

Definitions.—"Contributory" (section 213) ; "company", "the Court" (section 455 (1)).

251. Release of liquidators in England.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

NOTES

The section reproduces section 197 of the 1929 Act.

For the rules under the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 178, 202, and for the forms thereunder, see *ibid.*, Forms Nos. 98 to 100, 103. It is unlikely that any substantial change will be made either in the rules or forms.

Contributories.—See section 213.

Adjustment of rights of contributories.—See section 265.

Resignation and removal of liquidator.—See section 242.

Other related provisions.—Section 341 (disposal of books).

Definitions.—“Contributory” (section 213); “company”, “the Court” (section 455 (1)); “person” (Interpretation Act, 1889, section 19; 18 Halsbury’s Statutes 1001).

Committees of Inspection

252. Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.—(1) When a winding-up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) When a winding-up order has been made by the court in Scotland, the liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be the members of the committee if appointed :

Provided that, where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

(3) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

NOTES

The section reproduces section 198 of the 1929 Act.

Meetings of creditors and contributories.—The meetings here referred to are those summoned by the official receiver under section 239 (b). As to meetings of creditors in a voluntary winding up, see section 293.

Winding Up by Court.—See section 222.

Committee of inspection.—See section 253. As to committee of inspection in a voluntary winding up, see section 295.

Company's inability to pay debts.—See section 222.

Other related provisions.—Section 200 (powers of liquidator where there is no committee of inspection). See also the corresponding Winding-up Rules under the 1929 Act, viz., rule 211; see also *ibid.*, rules 159 to 161 (dealings with assets, etc.). It is unlikely that there will be any substantial changes in these rules.

Definitions.—"Contributory" (section 213); "official receiver" (section 233); "company", "the Court" (section 455 (1)).

253. Constitution and proceedings of committee of inspection.—

(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court :

Provided that, where in Scotland a winding-up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy :

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the

vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

NOTES

The section reproduces section 199 of the 1929 Act except for a minor amendment in subsection (7) effected by section 95 (3) of the 1947 Act as regards a vacancy occurring in the committee of inspection. The latter provision came into force on July 1, 1948.

Effect of change.—Under the 1929 Act the liquidator was bound to summon a meeting to fill any vacancy occurring in the committee of inspection. The liquidator may now apply to the Court for an order dispensing with that necessity if, having regard to the position in the winding up, he is of opinion that the filling of the vacancy would serve no useful purpose. This provision is also applied to section 295 (2), *post* (creditors' voluntary winding up).

Committee of inspection.—There is no statutory power to remove a committee of inspection (*Re Rubber and Produce Investment Trust*, [1915] 1 Ch. 382; 10 Digest 887, 6031). As to amending the constitution of the committee, see *Re Radford and Bright, Ltd.* (No. 2), [1901] 1 Ch. 735; 10 Digest 887, 6037. As to the provisions of the Companies (Winding-up) Rules, 1929, see *ibid.*, rules 159 *et seq.*

Company's inability to pay debts.—See section 222.

Other related provisions.—Section 252 (appointment of committee of inspection); section 295 (appointment of committee of inspection in voluntary winding up).

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)).

254. Powers of Board of Trade in England where no committee of inspection.—Where in the case of a winding up in England there is no committee of inspection, the Board of Trade may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

NOTES

The section reproduces section 200 of the 1929 Act.

Board of Trade.—Under the Companies (Winding-up) Rules, 1929, the powers of the Board are, subject to the Board's directions, exercisable by the official receiver (see *ibid.*, rule 211). It is unlikely that there will be any substantial change in this rule.

Authorised acts of the committee of inspection.—See sections 245 (1) (powers of liquidator); 246 (control of liquidator); 273 (delegation of certain powers to liquidator).

255. Additional powers of committee of inspection in Scotland.—In the case of a winding up in Scotland, the committee of inspection shall, in addition to the powers and duties conferred and imposed on it by this Act, have such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

NOTE

The section reproduces section 201 of the 1929 Act.

General Powers of Court in case of Winding up by Court

256. Power to stay winding up.—(1) The court may at any time after an order for winding-up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

NOTES

The section combines section 202 of the 1929 Act and 97 (1) of the 1947 Act. The latter provision came into force on July 1, 1948.

The section gives general power to the Court to stay any proceedings in a winding-up. The present section applies, of course, principally to a winding up by the Court, but by section 307, the same power is exercisable in the case of a voluntary winding up. It is now also provided that a copy of an order staying proceedings must be sent to the Registrar of Companies and a minute of the stay entered in his books relating to the company. This provision was originally introduced by section 97 (1) of the 1947 Act and is here incorporated.

Stay of proceedings.—An order staying the proceedings may also be made where a voluntary winding up is continued under supervision (*Re South Barrule Slate Quarry Co.* (1869), L.R. 8 Eq. 688; 10 Digest 1052, 7355); see generally as to stay of winding-up proceedings, 5 Halsbury's Laws (2nd Edn.), pp. 723–725. For forms, see Ency. Court Forms, Vol. 6, p. 510, Form No. 591. The application is by motion.

Application by contributory.—In the case of an application by an alleged contributory, he may be required to admit that he is a contributory before an order is made on his application (*Re Continental Bank Corporation, Re London Mediterranean Bank* (1867), 16 L.T. 112; affirmed on appeal, [1867] W.N. 178; 10 Digest 960, 6581).

Copy of order to registrar.—Unless any other conditions are prescribed, the copy of the order must be transmitted to the Registrar immediately it is made. This may not always be practicable, and the section obviously contemplates that regulations will be made dealing with this matter and providing for the time within which the copy is to be sent to the Registrar.

Definitions.—"Contributory" (section 213); "official receiver" (section 233); "company", "prescribed", "registrar of companies", "the Court" (section 455 (1)).

257. Settlement of list of contributories and application of assets.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

NOTES

The section reproduces section 203 of the 1929 Act. The effect of the section is to impose upon the Court the duty of settling a list of contributories, although this may be dispensed with if it appears unnecessary to the Court (subsection (1)).

List of contributories.—Under section 273, the duty imposed upon the Court as to settling the list of contributories, may be delegated to the liquidator. See also sections 212 (liability as contributories); 215 (contributories in case of death of a member); 216 (trustee in bankruptcy of a member); 217 (liability in case of married women). Sometimes the list is divided into two, (1) an "A" list of present members, and (2) a "B" list of past members. The "B" list can only be settled on the direction of the Court, who must be satisfied that the present members will probably be unable to meet their obligations (*Wright's Case* (1868), L.R. 12 Eq. 335, n.; 9 Digest 421, 2719). Where it is possible that surplus assets will be divisible among the shareholders, fully paid shareholders ought to be on the list of contributories (*Re Aidall, Ltd.*, [1933] Ch. 323, C.A.; Digest Supp.). Once the liquidator has settled the list of contributories, having heard all relevant objections to inclusion in the list, the matter is *res judicata* and cannot be re-opened, even if the decision was erroneous (*Re Westways Garage, Ltd.*, [1942] Ch. 356).

Register of members.—See section 110.

Application of assets to pay debts.—I.e., the debts at the date of winding up (*Re Hull Central Drapery Co.* (1880), 15 Ch.D. 326, C.A.; 10 Digest 954, 6545). As to the date of commencement of winding up, see section 229.

Definitions.—"Member" (section 26); "contributory" (section 213); "company", "the Court" (section 455 (1)), "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

258. Delivery of property to liquidator.—The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

NOTES

The section reproduces section 204 of the 1929 Act.

Application of section to voluntary winding up.—See section 307.

List of contributories.—See section 257.

Trustee.—This does not include a constructive trustee (*Re United English and Scottish Assurance Co., Ex parte Hawkins* (1868), 3 Ch. App. 787; 10 Digest 890, 6059).

Officer of the company.—The solicitor to a company is an officer within the meaning of this section (*Re Palace Restaurants, Ltd.*, [1914] 1 Ch. 492, at p. 500, C.A.; 10 Digest 815, 5309). As to how far an auditor is included, see *Findlay (Liquidator of Scottish Workmen's Assurance Co., Ltd.) v. Waddell*, [1910] S.C. 670; 10 Digest 1010, f.

Money.—The money must be money belonging to the company (*Re Imperial Land Co. of Marseille, Re National Bank* (1870), L.R. 10 Eq. 298; 10 Digest 891, 6060).

Books and papers.—The liquidator is not entitled to the possession of books or papers on which the company's solicitor had before the winding up acquired a valid lien, but he can obtain inspection of such books or papers under section 268 (*Re Capital Fire Insurance Association* (1883), 24 Ch.D. 408, C.A.; 10 Digest 863, 5825).

Prima facie entitled.—If there is a dispute as to ownership, there is no power to determine the dispute under this section (*Re Palace Restaurants, Ltd.*, *supra*). The Court will not make an order *ex parte* (see *Re Commercial Union Wine Co.* (1865), 35 Beav. 35; 10 Digest 891, 6061).

Other related provisions.—Section 261 (payment into the Bank of England of moneys due to company); section 262 (order on contributory conclusive evidence).

Definitions.—"Contributory" (section 213); "agent", "books and papers" "company", "officer", "the Court" (section 455 (1)).

259. Payment of debts due by contributory to company and extent to which set-off allowed.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

NOTES

The section reproduces section 205 of the 1929 Act.

General note.—The object of the section is to avoid a double process and to do complete justice in the winding up. An action should not be brought when the jurisdiction given by this section can be used (see *Cardiff Preserved Coal and Coke Co. v. Norton* (1867), 2 Ch. App. 405; 10 Digest 891, 6065).

Application of the section to voluntary winding up.—See section 307.

Effect of order.—The order can be enforced in the same way as a judgment (section 449. See also the Companies (Winding-up) Rules, 1929, rule 24). It is not, however, a judgment, and the right of action in respect of the amount due is not merged in or destroyed by the order (*Westmoreland Green and Blue Slate Co. v. Feilden*, [1891] 3 Ch. 15, C.A.; 10 Digest 920, 6303). A bankruptcy notice cannot be issued in respect of the order (*Re Sanders, Ex parte Whinney* (1884), 13 Q.B.D. 476; 10 Digest 997, 6920). As to enforcing in one part of Great Britain an order made in another part thereof, see section 276.

Set-off.—The right of set-off does not exist as against calls made in the winding up (*Re West of England and South Wales District Bank, Ex parte Branwhite* (1879), 48 L.J. Ch. 463; 10 Digest 939, 6436). A shareholder cannot in a winding up set off a debt owing to him by the company against a call (*Grissell's Case* (1866), 1 Ch. App. 528; 10 Digest 937, 6423) but his trustee in bankruptcy may do so (*Re Duckworth* (1867), 2 Ch. App. 578; 10 Digest 938, 6428).

Definitions.—"Limited company", "unlimited company" (section 1 (2)); "member" (section 26); "contributory" (section 213); "company", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

260. Power of court to make calls.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

NOTES

The section reproduces section 206 of the 1929 Act.

Power to make calls.—The call may be made before or after ascertaining what claims against the company will be established as debts (*Re Contract Corporation* (1866), 2 Ch. App. 95; 10 Digest 918, 6294); but the list of contributories must first have been settled (*Needham's Case* (1867), L.R. 4 Eq. 135, at p. 138; 10 Digest 910, 6222). The liquidator may be authorised to accept payment by instalments (*Re Law Guarantee Trust and Accident Society, Ltd.* (1910), 26 T.L.R. 565; 10 Digest 919, 6301). Shareholders are liable to pay calls made in the winding up even though the date for payment of an instalment has not arrived (*Re Cordova Union Gold Co.*, [1891] 2 Ch. 580; 10 Digest 919, 6298).

List of contributories.—See section 257.

Liquidator's power to make calls.—The Court's powers in relation to making calls are exercisable by the liquidator in a winding up by the Court as an officer of the Court, but only with the Court's leave or the committee's sanction and subject to certain restrictions (see section 273; Companies (Winding-up) Rules, 1929, rules 84 *et seq.* The Court may exercise the power by way of original right (*Re North Eastern Insurance Co., Ltd.* (1915), 85 L.J. Ch. 751; 10 Digest 888, 6038).

Supervision order.—The power under this section is also exercisable after the making of a supervision order, since a supervision order for this purpose is deemed to be a winding-up order (see section 315 (2)).

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)).

261. Payment into Bank of moneys due to company.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

NOTES

The section reproduces section 207 of the 1929 Act.

Banking arrangements.—See section 248.

Enforced in same manner as payment to liquidator.—See section 259, *ante*.
See also *Re Leeds Banking Co.* (1866), 1 Ch. App. 150; 10 Digest 920 6309.

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)).

262. Order on contributory conclusive evidence.—(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings except proceedings in Scotland against the heritable estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

NOTES

The section reproduces section 208 of the 1929 Act.

General note.—Section 259 provides that the Court, after making a winding-up order, may order any money due by a contributory to be paid to the company. Section 261 provides for the payment of money due by a contributory, etc., into the Bank of England. The present section now provides that an order made by the Court on a contributory is conclusive evidence that the money is due.

List of contributories.—See section 257.

Definitions.—"Contributory" (section 213); "the Court" (section 455 (1)).

263. Appointment in England of special manager.—(1) Where in proceedings in England the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

NOTES

The section reproduces section 209 of the 1929 Act.

General note.—Under section 245, the liquidator has power to carry on the business of the company in certain conditions. The necessity for so doing is determined by the Court (*Re Wreck Recovery and Salvage Co.* (1880), 15 Ch.D. 353, C.A.; 10 Digest 923, 6334). The present section enables the liquidator to obtain the appointment of a special manager if that course appears necessary for the beneficial winding up. Under Companies (Winding-up) Rules, 1929, rule 48, the appointment is made on the basis of the official receiver's report to the Court. It is unlikely that there will be any substantial change in that rule.

Special manager.—The validity of the appointment is not affected by the subsequent dismissal of the petition (see *Re A. B. & Co.* (No. 2), [1900] 2 Q.B. 429, C.A.; 4 Digest 203, 1880 (a bankruptcy case)).

Other related provisions.—The following rules were applicable under the Companies (Winding-up Rules), rules 57, 58 (security to the Board of Trade); rule 49 and *ibid.*, Form No. 21 (accounting by special manager). Substantial changes in the rules and form are not anticipated.

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)).

264. Power to exclude creditors not proving in time.—The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

NOTES

The section reproduces section 210 of the 1929 Act.

The Court.—The power of the Court may be delegated for this purpose to the liquidator (see section 273).

Proof of debts.—See sections 316 to 319. A creditor is allowed to prove although the time for bringing in his claim has gone so long as there are funds available and subject to such terms as the Court thinks fit as to costs and as to not disturbing dividends already paid (*Harrison v. Kirk*, [1904] A.C. 1; 24 Digest 791, 8222).

265. Adjustment of rights of contributories.—The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

NOTES

The section reproduces section 265 of the 1929 Act.

The effect of the section is to provide, *inter alia*, for the return of capital to the contributories.

Adjustment of rights of contributories.—This will include the right to enforce payment (see generally sections 212, 214, 215, 216, 217, 245 (1) (f), (2) (c), 257, 260, 261, 262, 273 (b), (d), 275).

Surplus assets for distribution.—That is after payment of the debts so that what remains is available for distribution among the shareholders. In general, that surplus will be paid according to the terms of the memorandum and articles having regard to the rights of the different classes of members (see *Griffith v. Paget* (1877), 5 Ch.D. 894; 10 Digest 1030, 7140). Only the rights of contributories *quod* contributories can be adjusted under this provision (see *Re Alexandra Palace Co.* (1883), 23 Ch.D. 297, at p. 300; 10 Digest 957, 6561). As to what are "surplus assets" see *Re Ramel Syndicate, Ltd.*, [1911] 1 Ch. 749; 10 Digest 999, 6939. See generally, 5 Halsbury's Laws (2nd Edn.), pp. 699 *et seq.*

Definitions.—"Contributory" (section 213); "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

266. Inspection of books by creditors and contributories.—

(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

NOTES

The section continues section 212 of the 1929 Act and section 97 (7) of the 1947 Act. The latter provision came into force on July 1, 1948, and is incorporated in subsection (2), *supra*. It is merely declaratory and does not effect any change in the law.

Books.—The term includes the register of mortgages (*Somerset v. Land Securities Co.* [1897] W.N. 29; 10 Digest 788, 4930). As to register of mortgages, see section 104.

Books to be kept by the liquidators.—See section 247. As to liability where proper books are not kept, see section 331, *post*. See also section 340, *post* (books of company as evidence).

Definitions.—"Contributories" (section 213); "book and/or paper", "company", "the Court" (section 455 (1)).

267. Power to order costs of winding up to be paid out of assets.—The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

NOTES

The section reproduces section 213 of the 1929 Act. Cf., section 309, *post*, as to voluntary winding up.

Costs of winding up.—For the position under the 1929 Act, see generally Companies (Winding-up) Rules, 1929, rule 192, where the order of priority is set out. The Court will not vary this order of priority except in exceptional circumstances (*Re London Metallurgical Co.*, [1895] 1 Ch. 758; 10 Digest 954, 6541). As to the costs of certain prosecutions, see section 334. For form of order see Ency. Court Forms, title Companies, Vol. 6, p. 515, Form No. 604.

268. Power to summon persons suspected of having property of company, etc.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

NOTES

The section reproduces section 214 of the 1929 Act.

Provisional liquidator.—See section 238.

Private examination.—See also *Re Overend, Gurney & Co., Ex parte Musgrave* (1867), 16 L.T. 378; 10 Digest 893, 6075. As to private examinations in bankruptcy, see generally 2 Halsbury's Laws (2nd Edn.), pp. 190–195.

Lien.—A person claiming a lien over any papers is not entitled to have the lien admitted before he delivers the papers in question although production may render the lien valueless (*Re South Essex Estuary and Reclamation Co., Ex parte Paine and Layton* (1869), 4 Ch. App. 215; 10 Digest 899, 6138).

Procedure to obtain order.—To obtain the attendance of a witness for examination (*Re Westmoreland Green and Blue Slate Co., Ltd.* (1891), 66 L.T. 52; 10 Digest 897, 6114) or the production of documents (*Credit Co., Ltd. v. Webster* (1885), 53 L.T. 419; 10 Digest 898, 6132) the liquidator or a creditor or contributory, as the case may be, must apply by summons and may not proceed by way of subpoena (*Whitworth's Case* (1881), 19 Ch.D. 118, C.A.; 10 Digest 897, 6112). The summons may be issued by a registrar (*Re Nowgong Tea Co.* (1867), 16 L.T. 47; 10 Digest 895, 6094). The examination is usually conducted by the liquidator but the judge may entrust the examination to a creditor or contributory (*Whitworth's Case, supra*), especially if the examination is that of the liquidator (*Re Sir John Moore Gold Mining Co.* (1877), 37 L.T. 242; 10 Digest 997, 6913). An application by the liquidator is made *ex parte*, a written statement being submitted to the registrar, no affidavit in support being necessary (*Re Gold Co.* (1879), 12 Ch.D. 77, C.A., at pp. 82, 83; 10 Digest 997, 6916). In other cases, notice must be given to the liquidator and the application must be supported by affidavit (*Re Sir John Moore Gold Mining Co., supra*; *Whitworth's Case, supra*). The person whose examination is sought must be capable of giving information (*Re A Debtor* (No. 3 of 1909), *Ex parte Goldstein*, [1917], 1 K.B. 558, at p. 563; 5 Digest 617, 5547 (a bankruptcy case)) and the Court may order an examination of its own motion without any application (*Re Land Securities Co., Ltd.* (1894), 42 W.R. 624; 10 Digest 893, 6072). The Court has a discretion as to ordering production of documents with which the Court of Appeal will not readily interfere (*Re Gold Co., supra*; *Re Maville Hose, Ltd.*, [1939] Ch. 32; [1938] 3 All E.R. 621; Digest Supp.). For the procedure on the examination, see generally Companies (Winding-up) Rules, 1929, rules 5, 70 *et seq.*, and 5 Halsbury's Laws (2nd Edn.), pp. 637 *et seq.* The examination is usually held in private and an order for an examination in court will not usually be made unless the person to be examined is charged with fraud (*Re Property Insurance*

Co., Ltd., [1914] 1 Ch. 775; 10 Digest 893, 6073). If the examination is in chambers the public have no right to be present (*Re Western of Canada Oil, Lands and Works Co.* (1877), 6 Ch.D. 109; 10 Digest 897, 6116).

Apprehension of witness.—Apart from being so apprehended, he may also be ordered to pay the costs of compelling him to attend (*Re Land Credit Co. of Ireland, Trower and Lawson's Case* (1872), L.R. 14 Eq. 8; 10 Digest 895, 6090).

Definitions.—"Book or paper", "book and paper", "company", "officer", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19 18 Halsbury's Statutes 1001).

269. Attendance of director of company at meetings of creditors, etc., in Scotland.—In the winding up by the court of a company registered in Scotland, the court shall have power to require the attendance of any officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

NOTES

The section reproduces section 215 of the 1929 Act except for a minor drafting amendment as to the persons whose attendance may be required, effected by section 122 (4) and the Seventh Schedule to the 1947 Act, which came into force for certain purposes on December 1, 1947, and for other purposes on July 1, 1948. The effect of the section remains the same.

It will be noted that the submission of a statement of affairs required by section 235, does not apply to a company being wound up in Scotland and the necessary information is, therefore, obtainable if desired, by making use of the procedure provided for in this section.

270. Power in England to order public examination of promoters and officers.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him :

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses

called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court being an official referee, master or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a Palatine Court, before a registrar of that court, and the powers of the court under this section may be exercised by the person before whom the examination is held.

NOTES

The section reproduces section 216 of the 1929 Act, except for a minor drafting amendment as to persons whose attendance may be required, effected by section 122 (4) and the Seventh Schedule to the 1947 Act, which came into force for certain purposes on December 1, 1947, and for other purposes on July 1, 1948. The effect of the section remains unchanged.

Further report by official receiver.—See section 236.

Fraud in relation to the company.—The section does not apply where the only charges against the company are of having committed frauds in the course of its business with the outside world, and not connected with its promotion or formation (*Re Medical Battery Co.*, [1894] 1 Ch. 444, at p. 447; 10 Digest 870, 5896).

After consideration of the report.—The Court must base its action on the official receiver's report only. Oral evidence outside the report cannot be received (see *Re Great Kruger Gold Mining Co., Ex parte Barnard*, [1892] 3 Ch. 307; 10 Digest 870, 5892).

Application for examination.—The application for an order for public examination may be made *ex parte* (*Re Great Kruger Gold Mining Co., Ex parte Barnard, supra*). The official receiver must act independently of the Board of Trade in respect of public examinations (*Public Examinations*, [1894] W.N. 44; 10 Digest 869, 5889). The judge may, if he thinks fit, give directions as to the special matters on which any person is to be examined (Companies (Winding-up) Rules, 1929, rule 60 (b)).

Application to discharge order.—An application to discharge the order may only be made on the ground of want of jurisdiction. The applicant cannot obtain an order that the report be sent back for further evidence (*Re New Travellers' Chambers, Ltd.*, [1895] 1 Ch. 395; 10 Digest 871, 5906). Notice of motion to discharge the order must be given within a reasonable time (*Re Civil, Naval and Military Outfitters, Ltd.*, [1899] 1 Ch. 215, C.A.; 10 Digest 870, 5895), and the Court will not, on an application to discharge, allow evidence to rebut any of the contents of the report (*Re New Travellers' Chambers, Ltd., supra*).

Procedure on public examination.—See generally Companies (Winding-up) Rules, 1929, rules 59 *et seq.*; 5 Halsbury's Laws (2nd Edn.), pp. 585 *et seq.*

Refusal to answer questions.—The fact that the question asked has some bearing on the issues in an action against the person being examined is no ground for refusing to answer (*Re Reliance Taxi-Cab Co., Ltd.* (1912), 28 T.L.R. 529; 10 Digest 896, 6105).

Definitions.—"Contributory" (section 213); "official receiver" (section 233); "company", "officer", "the Court" (section 455 (1)); "person" (Interpretation Act, 1899, section 19; 18 Halsbury's Statutes 1001).

271. Power to arrest absconding contributory.—The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the court may order.

NOTES

The section reproduces section 218 of the 1929 Act.

General note.—The section affects only the goods and chattels of the contributory and not his real estate. The Court may order the seizure of a contributory's goods without ordering the arrest of his person (*Re Imperial Mercantile Credit Co.* (1876), L.R. 5 Eq. 264; 10 Digest 920, 6308). As to the exercise of the power in a voluntary winding up, see section 307. As to the rules relating to arrests under the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 217 to 220.

272. Powers of court cumulative.—Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums.

NOTE

The section reproduces section 219 of the 1929 Act.

273. Delegation to liquidator of certain powers of court in England.—Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls;
- (e) the fixing of a time within which debts and claims must be proved; to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

NOTES

The section reproduces section 220 of the 1929 Act.

Meetings to ascertain wishes of creditors and contributories.—See section 346. See also Companies (Winding-up) Rules, 1929, rules 119 *et seq.*, and section 246 (2).

List of contributories.—See section 257, and Companies (Winding-up) Rules, 1929, rules 78 to 83.

Rectifying of register of members.—See section 257. As to register of members, see section 110.

Collection and application of assets.—See section 257, and Companies (Winding-up) Rules, 1929, rule 76.

Delivery of property to liquidator.—See section 258, and Companies (Winding-up) Rules, 1929, rule 77.

Calls.—See section 260, *ante*, and Companies (Winding-up) Rules, 1929, rules 84 to 88.

Fixing of time for proof of debts.—See section 264, and Companies (Winding-up) Rules, 1929, rule 104.

Sanction of committee of inspection.—If the committee of inspection refuse to grant leave, it may be granted by the Court (*Re North Eastern Insurance Co., Ltd.* (1915), 85 L.J. Ch. 751; 10 Digest 888, 6038). As to committee of inspection, see section 253, *ante*.

Definitions.—“Member” (section 26); “contributory” (section 213); “book or paper”, “company”, “the Court” (section 455 (1)).

274. Dissolution of company.—(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

NOTES

The section combines section 221 of the 1929 Act and sections 96 (3) and 97 (2) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

Effect of changes.—(i) *Dissolution order.*—A dissolution order need not be made unless it is applied for by the liquidator. (ii) *Copy of order to registrar.*—Under the 1929 Act, a dissolution order had only to be reported to the Registrar. It is now provided that a copy of the order must be forwarded within 14 days from the date thereof to the Registrar, who will make a minute of the company's dissolution in his books.

Voluntary winding up.—As to the application of this section to voluntary winding up, see sections 290 and 300.

Effect of dissolution.—A dissolution puts an end to a company's existence (*Salton v. New Beeston Cycle Co.*, [1900] 1 Ch. 43; 10 Digest 1033, 7162). The existence of continuing contracting obligations may, however, prevent the dissolution of the company (*Tolhurst v. Associated Portland Cement Manufacturers* (1900), [1902] 2 K.B. 660, C.A.; affirmed, [1903] A.C. 414; 10 Digest 1031, 7146). When the company is dissolved the statutory duty of the liquidator towards the creditors and the contributories is gone, but any breach of duty to a creditor through distributing the assets without complying with the statutory requirements renders him liable in damages (*Pulsford v. Devenish*, [1903] 2 Ch. 625; 10 Digest 1000, 6943; *Smith (James) & Sons (Norwood), Ltd. v. Goodman*, [1936] Ch. 216, C.A.; Digest Supp.). A judgment obtained against the company after its dissolution is invalid, and the solicitor acting for the company is personally liable for the plaintiff's costs from the date of the dissolution (*Salton v. New Beeston Cycle Co.*, *supra.*). Where proceedings are pending against a company about to be dissolved, the Court has power under section 256, to stay the proceedings in the winding up for the purpose of delaying the dissolution. For other provisions as to dissolution, see sections 352 to 356.

Definitions.—"Company", "registrar of companies", "the Court" (section 455 (1)).

Enforcement of and Appeal from Orders

275. Order for calls on contributories in Scotland.—(1) Where an order, interlocutor or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the said amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest.

(2) Any such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignment, unless with special leave of the court.

NOTE

The section reproduces section 222 of the 1929 Act.

276. Enforcement throughout United Kingdom of orders made in winding up.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern Ireland and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Northern Ireland by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor or decree, in the same manner as if it had been made by that court.

NOTES

The section reproduces section 223 of the 1929 Act.

Courts having jurisdiction to wind up companies registered in Scotland.—See sections 220, 221.

Northern Ireland.—The Act does not in general apply to Northern Ireland, see section 461. For Courts having jurisdiction in Northern Ireland, see Companies (Consolidation) Act, 1908, section 134, as adapted to Northern Ireland by the Government of Ireland (Companies, Societies, etc.) Order, 1922 (S.R. & O., 1922, No. 184).

277. Appeals from orders in Scotland.—(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders or judgments pronounced by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933,—

- (a) none of the orders specified in Part I of the Tenth Schedule to this Act shall be subject to review, reduction, suspension or stay of execution ; and
- (b) every other order or judgment (except as hereinafter mentioned) may be submitted to review by the Inner House by reclaiming motion enrolled within fourteen days from the date of the order or judgment :

Provided that an order being one of the orders specified in Part II of the Tenth Schedule to this Act shall, from the date of such order and notwithstanding that it has been submitted to review as aforesaid, be carried out and receive effect until the Inner House have disposed of the matter.

(3) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within fourteen days from the date of the order or judgment, but should such order or judgment not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

NOTE

The section reproduces section 224 of the 1929 Act.

(iii) VOLUNTARY WINDING UP

Resolutions for, and Commencement of, Voluntary Winding Up

278. Circumstances in which company may be wound up voluntarily.—(1) A company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily ;
- (b) if the company resolves by special resolution that the company be wound up voluntarily ;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression “ a resolution for voluntary winding up ” means a resolution passed under any of the provisions of subsection (1) of this section.

NOTES

The section reproduces section 225 of the 1929 Act.

General note.—A resolution to wind up under these provisions may provide either for a members' voluntary winding up, in which event the winding up is conducted by the company itself (see sections 283, 284), or a creditors' voluntary winding up, that is, one conducted by the creditors in conjunction with the members (see sections 292, 293). In either case, the Court can intervene in certain conditions to supervise the winding up (see sections 311 to 315). The procedure preliminary to the meeting to pass the required resolution is materially different in each case.

Company may be wound up voluntarily.—This provision does not apply to an unregistered company (see section 398), nor to an overseas company incorporated outside this country (sections 398, 409). The power to wind up voluntarily cannot be excluded by the articles, but the right of the holders of certain classes of shares to vote at meetings of the company may be restricted or excluded (see *Re Peveril Gold Mines, Ltd.*, [1898] 1 Ch. 122, C.A.; 10 Digest 836, 5474, and cf. *Wellton v. Saffery*, [1897] A.C. 299; 9 Digest 292, 1817).

Period fixed for duration of company.—It is not usual for articles of association to contain any provision as to the duration of the company, or to mention any event on the happening of which the company is to be dissolved.

Special resolution.—See section 141. A special resolution is necessary if for any reason not otherwise provided for in the section the company decides to wind up voluntarily. Under subsection (1) (a), *supra*, an ordinary resolution is sufficient, while under *ibid.*, paragraph (c), an extraordinary resolution will suffice. As to length of notice required for a meeting to pass a special resolution under subsection (1) (b), see *Re Union Hill Silver Co., Ltd.* (1870), 22 L.T. 400; 9 Digest 564, 3746. The notices summoning the meetings must be issued by authority of a resolution of the board of directors (*Re Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230; 10 Digest 1038, 7208) but the want of authority may be waived by the presence of all those having a right to vote (*Re Oxted Motor Co.*, [1921] 3 K.B. 32; 9 Digest 565, 3756).

Extraordinary resolution.—See section 141, *ante*. The notice convening the meeting must inform the members clearly that it is proposed to pass such resolution (*Re Bridport Old Brewery Co.* (1867), 2 Ch. App. 191; 10 Digest 987, 6835). As to what constitutes a sufficient notice, see *Stone v. City and County Bank* (1877), 3 C.P.D. 282, C.A.; 10 Digest 987, 6837.

Other related provisions.—Section 279 (notice of resolution); section 280 (commencement of winding up); section 353 (dissolution of company).

Definitions. “ Extraordinary resolution ”, “ special resolution ” (section 141); “ articles ”, “ company ” (section 455 (1)).

279. Notice of resolution to wind up voluntarily.—(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

NOTES

The section reproduces section 226 of the 1929 Act, except for a minor amendment in subsection (1) effected by section 97 (3) of the 1947 Act as regards notice in the Gazette. The latter-mentioned provision came into force on July 1, 1948. The effect of the section is the same.

Effect of changes.—Under the 1929 Act, the period within which notice was to be given by advertisement in the Gazette was 7 days. This time is now extended to 14 days.

Notice of resolution.—See also section 143.

Liquidator.—See sections 285, 286, 294.

Definitions.—"Resolution for voluntary winding up" (section 278); "default fine", "officer who is in default" (section 440); "company", "officer", "the Gazette" (section 455 (1)).

280. Commencement of voluntary winding up.—A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

NOTES

The section reproduces section 227 of the 1929 Act.

General note.—The section should be read with sections 278, 279. The date of commencement is not altered by a supervision order being made nor by a compulsory winding up order being made (see section 229).

Other related provisions.—Section 141 (resolutions); section 229 (voluntary winding up superseded by a compulsory order); section 311 (voluntary winding up continued under supervision).

Definitions.—"Resolution for voluntary winding up" (section 278).

Consequences of Voluntary Winding Up

281. Effect of voluntary winding up on business and status of company.—In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

NOTES

The section reproduces section 228 of the 1929 Act.

Commencement of voluntary winding up.—See section 280.

Carrying on business.—The provision is analogous to that of section 245 (1) (b) in the case of a compulsory winding up. From the commencement of winding up, a company's existence continues solely for the purpose of the winding up, and not for another purpose, e.g., an amalgamation (*Re London, Bombay and Mediterranean Bank, Ltd., Drew's Case* (1867), 36 L.J. Ch. 785; 10 Digest 995, 6901). Contracts with a company which are not required for its beneficial winding up are not, however, illegal as between the company and the other party to the contract (*Bateman & Co. v. Ball* (1887), 56 L.J. Q.B. 291; 10 Digest 995, 6904).

Effect of a resolution to wind up voluntarily.—The property does not vest in the liquidator (cf. section 243), but remains vested in the company whose corporate state and powers are not terminated. The company cannot carry on business except in certain conditions (*supra*), and the powers of directors cease except with proper sanction (section 285 (2)). A transfer of shares without the sanction of the liquidator

or any alteration in the status of a member is void in certain conditions (section 282). The company's assets must be applied as provided for by the Act (section 302). The provisions as to dispositions of the company's property, stay of proceedings and landlord's right to distrain do not apply as in the case of a compulsory winding-up order (see sections 226, 227, 228), neither does the official receiver become the provisional liquidator (section 239). A resolution to wind up voluntarily may, however, operate as a discharge of the company's employees (*Reigate v. Union Manufacturing Co. (Ramsbottom), Ltd.*, [1918] 1 K.B. 592, C.A.; 9 Digest 536, 3532). See, however, *British Waggon Co. v. Lea* (1880), 5 Q.B.D. 149; 10 Digest 924, 6335.

Other related provisions.—Section 323 (liquidator's right of disclaimer), and section 320 (fraudulent preference).

282. Avoidance of transfers, etc., after commencement of voluntary winding up.—Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

NOTES

The section reproduces section 229 of the 1929 Act. Cf. as to winding up by the Court, section 227, *ante*.

Transfer of shares.—See generally sections 73 to 85 and First Schedule, Table A, Part I, articles 22 to 28. See also note to section 227.

Alteration of status.—See note to section 227. The execution of a transfer without the liquidator's sanction is void but not illegal, and an action may lie for refusal to execute a transfer although the sanction has not been obtained (*Biederman v. Stone* (1867), L.R. 2 C.P. 504; 9 Digest 398, 2538).

Sanction by liquidator.—The liquidator may without the Court's sanction, sanction any transfer during the liquidation absolutely or conditionally and has the power to alter the register of members (*Re National Bank of Wales, Taylor, Phillips and Richards' Cases* [1897] 1 Ch. 298, C.A.; 9 Digest 398, 2541). When successive transfers are sanctioned, the ultimate transferee only is liable to contribute as a present member, but the transferor and prior transferees are liable as past members (*ibid.*). A transfer of shares to an infant shortly before the commencement of the winding up may be set aside by the liquidator, though the infant becomes of full age during the liquidation (*Castello's Case* (1869), L.R. 8 Eq. 504; 9 Digest 400, 2559). The right to transfer debentures is not affected by the winding up (*Re Goy & Co., Ltd., Farmer v. Goy & Co., Ltd.*, [1900] 2 Ch. 149; 10 Digest 773, 4833). A valid forfeiture of shares before the commencement of the winding up cannot be cancelled by the liquidator (*Dawes' Case* (1868), L.R. 6 Eq. 232; 9 Digest 426, 2767).

Commencement of voluntary winding up.—See section 280, *ante*.

Definitions.—"Member" (section 26); "company", "share" (section 455 (1)).

Declaration of Solvency

283. Statutory declaration of solvency in case of proposal to wind up voluntarily.—(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar of companies for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding five hundred pounds or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section two hundred and thirty of the Companies Act, 1929, is in this Act referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

(5) Subsections (1) to (3) of this section shall not apply to a winding up commenced before the commencement of this Act.

NOTES

The section combines section 230 of the 1929 Act and section 94 (1), (2), (5) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948. Subsections (3) and (4) of section 94 of the 1947 Act are incorporated in sections 288, 291, *post*.

Effect of changes.—The provisions of the 1929 Act have been drastically amended. Under that Act, directors were not obliged to commence the winding up within any definite period of the date on which the declaration was made. The declaration accordingly retained validity though the finances of the company might have greatly deteriorated between the dates on which the declaration was made and the date when the resolution was passed. Neither was there any provision holding the directors liable in such circumstances. Furthermore, there was no provision requiring the most recent picture possible of the affairs of the company. The present section remedies those defects by providing that—(i) the statutory declaration only retains its validity provided it is made within five weeks of the meeting at which the resolution to wind up voluntarily was passed; (ii) it must embody a statement of assets and liabilities as provided for; (iii) the directors are liable for any deficiency unless they establish that the declaration was made on reasonable grounds (subsections (1) to (3)).

Voluntary winding up.—See section 278, and sections 284 to 291 (members' voluntary winding up), 292 to 300 (creditors' voluntary winding up), 302 to 310, 316 to 319 (general provisions).

Statutory declaration.—For the changes effected in the declaration by the 1947 Act as incorporated in this section, see generally "Effect of changes," *supra*. It will be noted that certain other information must now be embodied in the declaration, and this called for suitable amendment to Board of Trade Form No. 39B (S.R. & O. 1929, No. 823, Schedule), see Companies (Forms) Order, 1948, S.I. 1948 No. 1518, Appendix V, *post*. See also 5 Halsbury's Laws (2nd Edn.) pp. 756, *et seq.* and Buckley on the Companies Act (11th Edn.), pp. 475, *et seq.*

Declaration to be made within 5 weeks before the passing of the resolution to wind up voluntarily.—This is one of the precautions designed to avoid a declaration of solvency being made without a liquidation in fact taking place.

Statement of assets and liabilities.—This is another of the precautions to give greater control in members' voluntary winding up with a view to avoiding a declaration of solvency being made in a reckless manner. It will apply only when a really solvent company has gone into liquidation (e.g., with a view to reconstruction), in which event the creditors are not consulted at all. Presumably, the only person to be satisfied as to solvency for the purposes of this provision, is the Registrar (see subsection (2)) since registration of the declaration must take place and the Registrar will be able to see whether in fact the company's assets cover its debts. For the purpose of these enactments, it may be that directors would not be able to protect themselves under subsection (3), *supra*, by including in the statement the formal particulars of the last audited balance sheet (as to which see generally section 149), particularly if the assets are *realisable* at prices less than those given and no reserves are in existence to "cushion" the deficiency. For this purpose, a distinction should be drawn between the balance sheet of a company as a going concern and a balance sheet as "break up value". Directors must, therefore, exercise caution and proceed on a conservative basis when considering the value of the assets for the purposes of a declaration of solvency. For a form of statement, see Magnus and Estrin on the Companies Act, 1947, Appendix A,

Form No. 10. The statement must show the state of the company's affairs at the latest practicable date before the making of the declaration. This will be a question of fact in each case, depending on the degree of complexity of the company's affairs and the time required to prepare the statement. It must, in any case, show the most recent picture possible of those affairs.

Directors must have reasonable grounds for making a declaration.—If, in fact, the company is wound up within five weeks after the declaration, the fact that the company, at the end of the specified period, is insolvent will be *prima facie* evidence that the director did not have reasonable grounds for his opinion that the company was solvent.

Creditors' voluntary winding up.—See sections 302 to 310. The declaration of solvency and the registration thereof is a condition precedent to a members' voluntary winding up, and if those conditions have not been complied with, the winding up is a creditors' winding up (subsections (2), (4), *supra*). A creditor may also present a petition to wind up the company compulsorily, if he can prove that the company is insolvent (see generally section 222 and 5 Halsbury's Laws (2nd Edn.) 539, *et seq.*).

Commencement of winding up. See section 280.

Commencement of the Act.—See section 462; see also "effect of changes", *supra*.

Definitions.—"Resolution for voluntary winding up" (section 278); "company", "director", "registrar of companies" (section 455 (1)).

Provisions applicable to a Members' Voluntary Winding Up

284. Provisions applicable to a members' winding up.—The provisions contained in the seven sections of this Act next following shall, subject to the provisions of the last of them, apply in relation to a members' voluntary winding up.

NOTES

The section corresponds with section 231 of the 1929 Act.

Members voluntary winding up.—See section 283.

285. Power of company to appoint and fix remuneration of liquidators.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

NOTES

The section reproduces section 232 of the 1929 Act.

Appointment of liquidator.—This is usually done at the time the resolution to wind up is passed (see section 280). The liquidator must give notice of his appointment (section 305), and as to the position where there is a vacancy in office, see section 304. As to the appointment of a liquidator in a creditors' voluntary winding up, see section 294. It should be noted that a liquidator in a voluntary winding up is not required to give security (cf. section 237, and the Companies (Winding-up) Rules, 1929, rule 57). The Court has power to fix the liquidator's remuneration where the company does not do so (*Re Carton, Ltd.* (1923), 128 L.T. 629; 10 Digest 993, 6878). As to his remuneration in the case of a creditors' voluntary winding up, see section 296. The liquidator cannot claim any remuneration as such if the resolution to wind up was invalid (*Re Allison, Johnson and Foster, Ltd., Ex parte Birkenshaw*, [1904] 2 K.B. 327; 10 Digest 992, 6875). If the statutory winding up is superseded by a compulsory order, the Court may review the liquidator's remuneration (*Re Mortimers (London), Ltd.*, [1937] Ch. 289).

Other related provisions.—Sections 245 (1) (b), 246 (2), 287, 298, 303, 307 (powers of liquidator); section 337 (duty to make returns, etc.).

286. Power to fill vacancy in office of liquidator.—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose, a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

NOTES

The section reproduces section 233 of the 1929 Act.

General note.—The Act does not appear to lay down any procedure if the liquidator in a voluntary winding up wishes to resign, although the present section and section 297 imply his right to do so. See also section 304 (power of Court to appoint and remove a liquidator in voluntary winding up). There also seems to be no power for the company to fill up vacancies in the office of a voluntary liquidator who has been appointed by the Court. The appointment of a liquidator on a supervision order, where the shareholders have not made the appointment, will be made by the Court (*Re London Quays and Warehouses Co.* (1868), 3 Ch. App. 394; 10 Digest 1044, 7264).

Meeting to be held in manner provided by Act or articles.—See sections 134, 135, and First Schedule, Table A, Part I, articles 50, *et seq.*

Definitions.—"Contributory" (section 213); "articles", "company", "the Court" (section 455 (1)).

287. Power of liquidator to accept shares, etc., as consideration for sale of property of company.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a

winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

NOTES

The section reproduces section 234 of the 1929 Act.

General note.—The section relates only to a members' voluntary winding up. As to its application to a creditors' voluntary winding up, see section 298. In the case of a supervision or a compulsory order, a sale can be made and all necessary things can be done under section 245 (2). An unregistered company can by registering under the Act avail itself of this provision (*Southall v. British Mutual Life Assurance Society* (1871), 6 Ch. App. 614; 9 Digest 660, 4400, and see note to section 382). As to amalgamation and reconstruction generally, see sections 208, 209, *ante*.

Dissenting member.—The personal representatives of a deceased member, although not registered as members, may exercise the right of dissent and a provision in the articles of association prohibiting a personal representative from exercising the rights and privileges of a member unless himself registered as a member does not prevent him from exercising the statutory right of dissent (*Llewellyn v. Kasintoe Rubber Estates, Ltd.*, [1914] 2 Ch. 670, C.A.; 9 Digest 405, 2594). Where the registered office of the company is abroad, notice to the liquidator is sufficient (*Brailey v. Rhodesia Consolidated, Ltd.*, [1910] 2 Ch. 95; 10 Digest 1024, 7104). A dissentient member is not entitled to have his name omitted from the list of contributories (*Re Imperial Land Co. of Marseilles, Ex parte Jeaffreson* (1870), 11 Eq. 109; 10 Digest 1028, 7130). Where a scheme is obviously unfair, a dissentient minority may obtain a compulsory winding-up order (*Re Consolidated South Rand Mines Deep, Ltd.*, [1909] 1 Ch. 491; 10 Digest 1023, 7098).

Statutory power of sale.—The power of sale may be exercised although the memorandum contains no such power (*Clinch v. Financial Corporation* (1868), L.R. 5 Eq. 450, at p. 472; affirmed, 4 Ch. App. 117; 9 Digest 668, 4445). The new company, however, must have power under its memorandum to accept a transfer (*Pulbrook v. New Civil Service Co-operation, Ltd.* (1877), 26 W.R. 11; 10 Digest 1017, 7060). The transferor company can sell to a company which is not a company within the meaning of the Act, e.g., a foreign company, but not to an individual except perhaps to an agent or trustee for a company to be formed (*Bird v. Bird's Patent Deodorizing and Utilising Sewage Co.* (1874), 9 Ch. App. 358; 10 Digest 1018, 7069). The making of a supervision order does not take away the power of sale (*Re Imperial Mercantile Credit Association* (1871), L.R. 12 Eq. 504; 10 Digest 1023, 7093) which may be subsequently exercised without the Court's sanction (*Wright's Case* (1870), 5 Ch. App. 437; 10 Digest 1045, 7273). The sale binds both the shareholders and the creditors of the transferor company (*Re City and County Investment Co.* (1879), 13 Ch.D. 475, C.A.; 10 Digest 1029, 7132). The agreement for sale may validly provide that the transferor company should call up its unpaid capital and transfer the amount so realised to the transferee company (*New Zealand Gold Extraction Co. (Newbery-Vautin Process) v. Peacock*, [1894] Q.B. 622, C.A.; 9 Digest 663, 4417), but the agreement cannot validly provide for a call to be made on the shares of the transferor company in case its assets do not realise a specified amount (*Clinch v. Financial Corporation, supra*).

Allotment of shares in compensation for transfer.—A liability to pay cash cannot be imposed on members of the transferor company by allotting them shares credited as partly paid up except with their consent (*Re Imperial Mercantile Credit Association, supra*). A member of the transferor company, even if he has not served notice of dissent, cannot be compelled to accept shares in the transferee company, but if he has not served such notice, he is not entitled to compensation for his interest in the transferor company (*Re Bank of Hindustan, China and Japan, Ex parte Los* (1865), 6 New Rep. 327; 10 Digest 1022, 7091). If the shares which he declines to accept are sold, he is, however, entitled to the net proceeds of sale (*Re Lake View Extended Gold Mine (Western Australia), Ltd.*, [1900] W.N. 44; 10 Digest 1030, 7141).

Stamp duty.—An agreement that the members of one company are, in exchange for their shares therein, to take shares in another company is chargeable with stamp duty *ad valorem* (*Chesterfield Brewery Co. v. Inland Revenue Commissioners*, [1899] 2 Q.B. 7; 10 Digest 1032, 7155). Relief is, however, available in certain cases (see Finance Act, 1929, section 55, as amended by the Finance Act, 1938, section 31; 31 Halsbury's Statutes 341). As to the liability to profits tax, see the Finance Act, 1947, section 36 (40 Halsbury's Statutes 549). See also the Income Tax Act, 1945, section 55 (38 Halsbury's Statutes 219).

With sanction of a special resolution.—The special resolution must specifically confer the necessary authority on the liquidator; it is not sufficient to pass special resolutions for voluntary winding up and for distributing the proceeds of any sale (*Etheridge v. Central Uruguay Northern Extension Rail. Co.*, [1913] 1 Ch. 425; 10 Digest 1019, 7075). A special resolution is invalid unless the notice convening the meeting distinctly states that it is intended to proceed under the statutory provision (*Imperial Bank of China, India and Japan v. Bank of Hindustan, China and Japan* (1868), L.R. 6 Eq. 91; 10 Digest 1018, 7068).

Sanction necessary if winding-up order made.—The sanction of the Court must be obtained at or after the making of the winding-up or supervision order, and cannot be previously obtained in the voluntary winding up (*Re Callao Bis Co.* (1889), 42 Ch.D. 169, C.A.; 10 Digest 1017, 7065).

Arbitration as to amount payable.—An article of association purporting to exclude a reference to arbitration is not binding on dissentient members (*Baring-Gould v. Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80, C.A.; 9 Digest 101, 426), nor is an article which omits the proviso in favour of dissentient shareholders (*Payne v. Cork Co., Ltd.*, [1900] 1 Ch. 308; 10 Digest 991, 6862). The value of a dissentient member's interest depends on the value of his proportionate share of the assets of the old company (*Re Mysore West Gold Mining Co.* (1889), 42 Ch.D. 535; 10 Digest 1026, 7116). A commission may be granted to examine witnesses abroad to ascertain the value of the assets (*ibid.*), but a shareholder will not be allowed to examine officers of the company in order to obtain evidence for use on the arbitration (*Re British Building Stone Co., Ltd.*, [1908] 2 Ch. 450; 10 Digest 1025, 7112) nor may he examine the books of the company (*Morgan's Case* (1884), 28 Ch.D. 620; 10 Digest 1025, 7111).

Definitions.—"Member" (section 26); "special resolution" (section 141); "company", "share", "the Court" (section 455 (1)); "writing" (Interpretation Act, 1889, section 20; 18 Halsbury's Statutes 1001).

288. Duty of liquidator to call creditors' meeting in case of insolvency.—(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section two hundred and eighty-three of this Act he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds.

NOTES

The section corresponds with section 94 (3), (5) of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that if, in the case of a declaration of solvency having been made (see section 283), the liquidator thinks that the company will not be able to pay its debts within the stated period, he must summon a meeting of creditors for the purpose of putting before them the latest picture of the company's finances, certain penalties being prescribed in case of default.

Commencement of voluntary winding up.—See section 280.

Company unable to pay its debts.—The provisions would be invoked, for example, if the liquidator had reasonable grounds for doubting the company's solvency. Presumably, the underlying idea is that the liquidator should not wait until the last moment before putting the position before the creditors where it appears that the assets have not the realisation value that they were first given. In that event, the section provides for certain measures to be taken *as soon as the relative facts* require those steps. In cases of any doubt, it is suggested the liquidator would have to consider whether, if he does not take the required steps, the losses to the creditors will be increased.

Meeting of creditors.—See generally sections 289, 293. After the summoning of the meeting, the winding up becomes to all intents and purposes a creditors' winding up (see sections 292 *et seq.*).

Commencement of the Act.—See section 464 (2).

289. Duty of liquidator to call general meeting at end of each year.—(1) Subject to the provisions of section two hundred and ninety-one of this Act, in the event of the winding up continuing for more than one

year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

NOTES

The section reproduces section 235 of the 1929 Act except for a minor amendment in subsection (1) effected by section 95 (1) of the 1947 Act as regards a limitation on the time within which the meeting summoned by the liquidator may be called. The latter provision came into force on July 1, 1948.

Effect of changes.—Under the 1929 Act, it was left to the discretion of the liquidator as to how soon after the end of the year it was convenient to summon the necessary meetings. This requirement is not substantially interfered with so long as the meetings are convened within 3 months after the end of the year, but if he finds that an extension of that time is necessary, he must obtain leave of the Board of Trade to convene the meetings at a later date. For the provisions applicable to a creditors' winding up in an analogous case, see section 299.

Commencement of winding up.—See section 280.

Other related provisions.—Section 238 (first meeting of creditors); 290, 300 (final meetings); 295 (committee of inspection); 341 (disposal of books).

290. Final meeting and dissolution.—(1) Subject to the provisions of the next following section, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding fifty pounds.

NOTES

The section corresponds with section 236 of the 1929 Act, except as to subsection (6) which is new. The latter subsection reproduces section 95 (2) of the 1947 Act, which came into force on July 1, 1948.

Effect of changes.—Under the 1929 Act, no provision was made for a penalty for non-compliance. Subsection (6), *supra*, closes that gap.

Final meeting in a voluntary winding up.—The purpose of the meeting is to consider the liquidator's account of the winding up, and if necessary, dispose of the books (see section 341). The procedure at such meetings is the same as at the annual meetings held under section 289, and it should be noted that in those cases the winding up rules do not apply, and presumably the matter will be governed by the articles of the company on questions such as length of notice to be given, voting, etc., although special provision is made in the case where no quorum is present (subsection (3), *supra*). Dissolution of the company is deemed to take effect as provided for in subsection (4), *supra*, but it should be noted that this may be deferred in certain cases (*ibid.*) (see also section 307, Court's power to stay proceedings). For analogous provisions in the case of a creditors' voluntary winding up, see sections 299, 300.

Definitions.—"Company", "registrar of companies", "the Court" (section 455 (1)).

291. Alternative provisions as to annual and final meetings in case of insolvency.—Where section two hundred and eighty-eight of this Act has effect, sections two hundred and ninety-nine and three hundred thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section two hundred and ninety-nine at the end of the first year from the commencement of the winding up, unless the meeting held under the said section two hundred and eighty-eight is held more than three months before the end of that year.

NOTES

The section corresponds with section 94 (4) of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that where the liquidator has called a creditors' meeting under section 288, on the ground of the company's insolvency, the winding up then proceeds as if it were a creditors' voluntary winding up and annual meetings both of the company and the creditors (section 299) and a final meeting (section 300) must be called. If, however, the creditors' meeting summoned under section 288, is held three months or less before the end of that year, no further meetings need be called for that year, as would otherwise be required under section 299.

Members' voluntary winding up.—See sections 284 *et seq.*

Creditors' voluntary winding up.—See sections 292 *et seq.*

Liquidator.—See sections 285 (members' winding up) ; 294 (creditors' winding up).

Commencement of the winding up.—See section 280.

Definitions.—"Member" (section 26) ; "creditors' voluntary winding up", "members' voluntary winding up" (section 283 (4)).

Provisions applicable to a Creditors' Voluntary Winding Up

292. Provisions applicable to a creditors' winding up.—The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

NOTES

The section reproduces section 237 of the 1929 Act.

General note.—The provisions here mentioned will apply where the directors are unable to make a statutory declaration as required by section 283, *ante*, or where one having been made, the company is unable to pay its debts (see section 288, *ante*).

293. Meeting of creditors.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with subsections (1) and (2) of this section;

(b) by the directors of the company in complying with subsection (3) of this section;

(c) by any director of the company in complying with subsection (4) of this section;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

NOTES

The section reproduces section 238 of the 1929 Act.

General note.—The section does not, in terms, state what length of notice must be given to convene a creditors' meeting. The notices, however, must be posted simultaneously with those convening the meeting of the members (subsection (1)). The length of notice to members will depend on the articles, and the same notice would therefore be required in the case of the creditors. As to the method of convening meetings under the corresponding section of the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 125 to 154.

Commencement of winding up.—See section 280.

Creditors' claims.—See section 316.

Registered office.—See section 107.

Meeting of the company.—See sections 130 *et seq.*

Other related provisions.—Section 294 (appointment of liquidator); section 240 (committee of inspection); sections 299, 300 (annual and final meetings); section 303 (liquidator's duties and powers); section 346 (Court's power to convene meetings).

Definitions.—"Resolution for voluntary winding up" (section 278); "officer who is in default" (section 440 (2)); "company", "director", "Gazette", "officer" (section 455 (1)).

294. Appointment of liquidator.—The creditors and the company at their respective meetings mentioned in the last foregoing section may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

NOTES

The section reproduces section 239 of the 1929 Act.

General note.—It should be noted that the nominations for a liquidator to be appointed will take place at the meeting at which the resolution to wind up was passed (as to which, see section 280), and at the meeting of creditors summoned by the company (see section 293). The section also makes provision where (i) the creditors' meeting fails to nominate a liquidator, and (ii) different persons are nominated by each meeting. Provision is also made for application to the Court to nominate a liquidator.

Application to the Court.—It has been suggested that where, through an oversight, a meeting of creditors has not been summoned, an application should be made to the Court for the confirmation of the appointment of a liquidator appointed by the company and orders have been made on such applications, subject to the creditors' approval of the liquidator, which can be given by notice in writing.

Person.—A body corporate cannot be appointed liquidator (see section 335, *post*).

Other related provisions.—Section 296 (liquidator's remuneration) ; sections 297, 304 (vacancy in liquidator's office) ; section 305 (notice of liquidator's appointment) ; section 335 (disqualification for appointment as liquidator).

Definitions.—" Member " (section 26) ; " company ", " director ", " the Court ". (section 455 (1)).

295. Appointment of committee of inspection.—(1) The creditors at the meeting to be held in pursuance of section two hundred and ninety-three of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections two hundred and fifty-three (except subsection (1)) and two hundred and fifty-five of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

NOTES

The section reproduces section 240 of the 1929 Act except for a minor amendment imported into subsection (2) effected in section 253 (7), *ante*, by section 95 (3) of the 1947 Act as regards a vacancy occurring in the committee of inspection. The latter provision came into force on July 1, 1948.

Effect of changes.—See the note “Effect of changes” to section 253.

General note.—The initiative in appointing a committee of inspection rests with the creditors, and by implication from the words “and if such a committee *is appointed*, the company may . . . appoint . . . persons . . . to act as members of the committee”, it would appear that the company cannot appoint a committee if the creditors have not appointed one. It should be noted that the creditors’ meeting follows the members’ meeting (see section 293), so that at the company’s meeting it will not necessarily be known whether or not the creditors propose to nominate a committee of inspection. In practice, in order to avoid the expense of summoning another company meeting after the creditors have held theirs, it is usual for the members tentatively to nominate members to serve on the committee, and if the creditors appoint a committee, then the company’s nominations become effective, subject to the proviso to subsection (1), *supra*.

Subject to the provisions of this section and the general rules.—In general, but subject to the provisions of the section, the rules which govern the committee of inspection are the same as those in a compulsory winding up (as to which see sections 253, 255). For the position under the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 159, 161 to 163. There are no parallel provisions here to provide for the official receiver acting in the event of no committee of inspection being appointed as is the case in a compulsory winding up.

296. Fixing of liquidators’ remuneration and cesser of directors’ powers.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

NOTES

The section reproduces section 241 of the 1929 Act.

General note.—The provisions are analogous to those in the case of a members’ voluntary winding up (as to which see section 285). As to the power of the Court to review the liquidator’s remuneration where the voluntary winding up is superseded by a compulsory order, see *Re Mortimers (London), Ltd.*, [1937] Ch. 289; [1937] 2 All E.R. 364.

Committee of inspection.—See section 295.

Liquidator.—See section 294.

297. Power to fill vacancy in office of liquidator.—If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

NOTES

The section reproduces section 242 of the 1929 Act.

General note.—These provisions are analogous to those of section 286, in the case of a members’ voluntary winding up. See also section 304. As to the summoning of a meeting of creditors for the purpose, see Companies (Winding-up) Rules, 1929, rule 127 (3).

298. Application of s. 287 to a creditors’ voluntary winding up.—The provisions of section two hundred and eighty-seven of this Act shall apply in the case of a creditors’ voluntary winding up as in the case of a members’ voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

NOTES

The section reproduces section 243 of the 1929 Act.

Powers not exercisable except with sanction of Court or committee of inspection.—The wording of the section seems to indicate that the sanction here required is additional to, and not in substitution for, the special resolution required by section 287.

Definitions.—“Creditors’ voluntary winding up”, “members’ voluntary winding up” (section 283 (4)); “the Court” (section 455 (1)).

299. Duty of liquidator to call meetings of company and of creditors at end of each year.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

NOTES

The section reproduces section 244 of the 1929 Act, except for a minor amendment in subsection (1) effected by section 95 (1) of the 1947 Act as regards a limitation on the time within which the meeting summoned by the liquidator may be called. The latter provision came into force on July 1, 1948.

Effect of change.—The effect of the changes are analogous to those of section 289, in the case of a members' voluntary winding up (as to which see generally the notes there given).

Commencement of the winding up.—See section 280.

300. Final meeting and dissolution.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues :

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding fifty pounds.

NOTES

The section reproduces section 245 of the 1929 Act, except for subsection (6), which is new. The last-mentioned subsection corresponds with section 95 (2) of the 1947 Act which came into force on July 1, 1948.

Effect of section.—The provisions of the section are analogous to those of section 290, in the case of a members' voluntary winding up (as to which see the notes there given). For the procedure at meetings convened under this section, see Companies (Winding-up) Rules, 1929, rules 125 to 154.

Return of final meetings.—For the form, see Board of Trade Form No. 15B (S R. & O. 1929, No. 823, Schedule, see Appendix V, *post*).

Definitions.—"Company", "registrar of companies", "the Court", "the Gazette" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

Provisions applicable to every Voluntary Winding Up

301. Provisions applicable to every voluntary winding up.—

The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

NOTES

The section reproduces section 246 of the 1929 Act.

Voluntary winding up.—See section 278. See also section 283 (members' voluntary winding up and creditors' voluntary winding up), and section 288, as to the calling of creditors' meeting in case of insolvency in certain cases.

302. Distribution of property of company.—Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

NOTES

The section reproduces section 247 of the 1929 Act.

Preferential payments.—See sections 309, 319.

Property.—This includes not only the ordinary property of the company, but also all contributions which the liquidator is entitled to obtain from members, or persons who have been members within a certain time before the winding up commenced, and all assets which have been misappropriated as against creditors, and which a creditor has a right to have recognised (*Stringer's Case* (1869), 4 Ch. App. 475; 10 Digest 889, 6048). These form a common fund to be applied as directed by the Act (*Webb v. Whiffin* (1872), L.R. 5 H.L. 711, at pp. 720, 724; 10 Digest 888, 6047).

Property to be distributed in satisfaction of liabilities *pari passu*.—Subject to the rights of secured creditors and to the rights of certain creditors to be paid in priority, the assets are subject to a trust for the benefit of all the creditors to the extent of their debts, and must be distributed upon the footing of equality (*Re Oriental Inland Steam Co., Ex parte Scinde Rail. Co.* (1874), 9 Ch. App. 557; 10 Digest 864, 5829). Liabilities to creditors rank in priority to all claims of members (see *Elkins v. Capital Guarantee Society* (1900), 16 T.L.R. 423, C.A.; 10 Digest 992, 6873). The liquidator is not, however, entitled to pay a statute-barred debt if the shareholders object to his proposal to do so (*Re Fleetwood and District Electric Light and Power Syndicate*, [1915] 1 Ch. 486; 10 Digest 1002, 6959). Where the assets are insufficient, section 267, *ante*, is applicable. *Prima facie* all expenses ought to be paid before the liquidator's remuneration, but, *semble*, he may be authorised to retain the remuneration paid when he had no reason to suppose that the assets would be insufficient for the payment of the costs, charges and expenses (*Re Beni-Felkai Mining Co., Ltd.*, [1934] Ch. 406; Digest Supp.). If the liquidator neglects his duty to discharge the debts *pari passu*, he may be liable in damages (*Pulsford v. Devenish*, [1903] 2 Ch. 625; 10 Digest 1000, 6943). Except as provided for in section 319, *post*, the Crown has no priority over other unsecured creditors in respect of debts due to the Crown (*Food Controller v. Cork* [1923] A.C. 647; 10 Digest 943, 6460).

Distribution among members according to rights and interests.—The articles may provide for a distribution on a different basis from the rights and interests of the members during the life of the company, e.g., by a distribution of assets in specie (see *Re South African Supply and Cold Storage Co.*, [1904] 2 Ch. 268). But a provision in the memorandum that the income and profits of the company should not be distributed to the members is not operative in a winding up (*Re Merchant Navy Supply Association, Ltd.*, [1947] 1 All E.R. 894).

Definitions.—"Member" (section 26) "articles", "company" (section 455 (1)).

303. Powers and duties of liquidator in voluntary winding up.

—(1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (d), (c) and (f) of subsection (1) of section two hundred and forty-five of this Act to a liquidator in a winding up by the court ;
- (b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court ;
- (c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories ;
- (d) exercise the power of the court of making calls ;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

NOTES

The section combines section 248 of the 1929 Act and section 95 (4) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of changes.—Under the 1929 Act the liquidator required the sanction of the Court or the committee of inspection, (i) to pay any class of creditors in full ; (ii) to compromise or arrange with creditors or other persons claiming to be such ; (iii) to compromise calls, liabilities, claims, etc., against contributories or other debtors. If there was no acting committee of inspection, then the liquidator had to apply to the Court for leave to exercise those powers. Section 95 (4) of the 1947 Act (which is here incorporated) amended those provisions to provide that these powers may be granted by a meeting of creditors, without recourse to the Court.

Members' voluntary winding up.—See section 283.

Creditors' voluntary winding up.—See sections 283, 288.

Committee of inspection.—See section 295.

Exercise of liquidator's power.—A compromise by a liquidator with a creditor, although made without the necessary sanction, is valid and binding, at any rate on the liquidator, and probably on the company where the creditor was unaware of the failure to comply with the formalities (*Cyclemakers' Co-operative Supply Co. v. Sims*, [1903] 1 K.B. 477 ; 10 Digest 991, 6863).

Liquidator's power under a compulsory order.—See section 245. This includes power to carry on the company's business (*ibid.*, subsection (1) (b)), and he is justified in exercising this power if he *bonâ fide* and reasonably forms the opinion (though it may be falsified by events) that the carrying on of the business is necessary for the beneficial winding up of the company (*Re Great Eastern Electric Co., Ltd.*, [1941] Ch. 241 ; [1941] 1 All E. R. 409 ; 2nd Digest Supp.).

Winding up by Court.—See sections 222, 225, 229 to 232.

List of contributories.—See section 257. See also section 212 (liability of contributories), and generally sections 214, 215, 216, 217 (general provisions as to

contributories). Notice of the settlement of the list of contributories is usual, but not necessary, and absence of notice is no defence to an action for calls (*Brighton Arcade Co. v. Dowling* (1868), L.R. 3 C.P. 175; 10 Digest 997, 6919).

Calls.—See section 260.

Adjustment of rights of contributories.—See section 265. A call made to adjust the rights of contributories *inter se*, after all debts and costs are provided for, is invalid (*Re Anglesea Colliery Co.* (1866), 1 Ch. App. 555; 10 Digest 909, 6215).

Several liquidators.—The liquidators cannot delegate their powers generally to one of their number, but they may delegate the execution of a particular document (*Re London and Mediterranean Bank, Ex parte Birmingham Banking Co.* (1868), 3 Ch. App. 651; 10 Digest 990, 6853). When one of two liquidators dies, the survivor cannot act alone, and a new liquidator must be appointed (*Re Metropolitan Bank and Jones* (1876), 2 Ch. D. 366; 10 Digest 990, 6856).

Other related provisions.—Section 245 (powers of a liquidator); section 246 (control of liquidator); sections 287-298 (transfer or sale of business or of shares, etc., of company); section 307 (power to apply to Court); section 333 (proceedings against liquidators); section 337 (duty to make returns).

Definitions.—"Member" (section 26); "extraordinary resolution" (section 141); "contributory" (section 213); "members' voluntary winding up", "creditors' voluntary winding up" (section 283 (4)); "company", "the Court" (section 455(1)).

304. Power of court to appoint and remove liquidator in voluntary winding up.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

NOTES

The section reproduces section 249 of the 1929 Act.

Appointment of liquidator.—It should be noted that the Court has power to appoint more than one liquidator (see section 237 and *Re Sunlight Incandescent Gas Lamp Co.*, [1900] 2 Ch. 728; 10 Digest 994, 6895). Presumably the present section would be invoked where at any time there is no liquidator, although in some cases the appropriate procedure would be that under section 238. In a compulsory winding up, the Court in making the appointment will have regard to the provisions of section 239. In no circumstances may the Court appoint a body corporate as liquidator (see section 335). As to normal procedure in the case of an appointment in a members' voluntary winding up, see section 285, and in the event of a vacancy occurring, see section 286.

Removal or resignation of liquidator.—See sections 286, 296 (normal procedure in voluntary winding up), and section 242 (1) (removal of liquidator by the Court). The Court may remove a sole liquidator who becomes of unsound mind and appoint another liquidator (*Re North Molton Mining Co., Ltd.* (1886), 54 L.T. 602; 10 Digest 994, 6886). The Court's power to remove a liquidator under the present section is general, and will apply whether the appointment in the first place was under a voluntary winding up or by the Court, except that in the case of a winding up subject to supervision, the power to remove a liquidator is given to the Court under section 314. Application for removal of a liquidator may be made by a creditor or contributory under section 307 (see *Re New De Kaap, Ltd.*, [1908] 1 Ch. 589; 10 Digest 994, 6892). The words "cause shown" used in the section imply unfitness on the part of the liquidator in a wide sense (*Re Sir John Moore Gold Mining Co.* [1879], 12 Ch. D. 325, C.A.; 10 Digest 993, 6883). This, however, is not to be taken as laying down any rule. If the Court is satisfied that in the interests of the parties concerned, a particular person should not manage the assets, the Court has power to remove him even though there is no question of misconduct or unfitness (*Re Eytton (Adam), Ltd., Ex parte Charlesworth* (1887), 36 Ch.D. 299, C.A.; 10 Digest 886, 6028). In general, the Court of Appeal will not interfere if the Judge has exercised his discretion judicially (*Re Urmston Grange Steamship Co., Ltd.* (1901), 17 T.L.R. 553, C.A.; 10 Digest 994, 6888) but the Court of Appeal must see whether cause is shown or not (*Re Sir John Moore Gold Mining Co., supra*). A liquidator may appeal against the order removing him (*Re Eytton (Adam), Ltd., Ex parte Charlesworth, supra*).

Gazette notice, etc., of appointment.—See section 305.

305. Notice by liquidator of his appointment.—(1) The liquidator shall, within fourteen days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

NOTES

The section combines section 250 of the 1929 Act and section 97 (3) of the 1947 Act. The last-mentioned provision came into force on July 1, 1948.

Effect of change.—The period within which the liquidator must notify his appointment to the Registrar is now 14 days instead of 21 under the 1929 Act. He is now required, within the same period, to publish notice of his appointment in the Gazette, as well as to notify the Registrar. These provisions are analogous to those under section 279 in the case of a notice of resolution to wind up voluntarily.

Notice to Registrar.—For the forms, see Board of Trade Forms, Nos. 39C (in the case of a members' winding up) and 39D (in the case of a creditors' winding up) (S.R. & O. 1929, No. 823, Schedule, see Appendix V, *post*).

Statutory instrument.—See the Statutory Instruments Act, 1946.

Definitions.—"The Gazette", "registrar of companies" (section 455 (1)).

306. Arrangement when binding on creditors.—(1) Any arrangement entered into between a company about to be, or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

NOTES

The section reproduces section 251 of the 1929 Act.

Arrangement with creditors.—See sections 206, 245 (1) (e), (f), and 245 (1). The Court may, in any event, intervene in such arrangement on appropriate application being made under section 307.

Appeal against arrangement.—See *Re Contal Radio, Ltd.*, [1932] 2 Ch. 66; Digest Supp. (composition with creditors as result of which company is solvent is not within the section. *Quaere* if a compromise is included).

Definitions.—"Extraordinary resolution" (section 141); "contributory" (section 213); "company", "the Court" (section 455 (1)).

307. Power to apply to court to have questions determined or powers exercised.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

NOTES

The section combines section 252 of the 1929 Act and section 97 (1) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of changes.—It is now provided that a copy of an order staying proceedings must be sent to the Registrar of Companies and a minute of the stay entered in his books relating to the company.

The effect of the section is to provide the company, its contributories, and creditors the means of access to the Court in a voluntary winding up, just as in a compulsory winding up or a winding up under supervision (see *Rance's Case* (1870), 6 Ch. App. 104, at pp. 114, 115; 10 Digest 1009, 6999).

Enforcing calls.—See sections 260, 276.

Other matters.—See, e.g., sections 226, 256, 257, 259, 265, 268, 269, 271.

Application to Court.—In general, application should be made by the liquidator (*Whitworth's Case* (1881), 19 Ch.D. 118, C.A.; 10 Digest 897, 6112), but a liquidator would not be under a duty to bring a matter before the Court where a shareholder dissents as regards a claim allowed by him against the company (*Re Licensed Victuallers' Mutual Trading Association, Ex parte Audain* (1889), 42 Ch. D. 1, C.A.; 9 Digest 177, 1127). The liquidator may apply for the determination of any question fairly arising in the liquidation (*Re Union Bank of Kingston-upon-Hull, infra*) but the practice is only to answer specific questions. The application may be made by motion or originating summons (*Re Union Bank of Kingston-upon-Hull* (1880), 13 Ch.D. 808; 10 Digest 1025, 7109). An order may be made for a private examination under section 268, *ante*, but the liquidator must satisfy the Court that it is just and beneficial that the order should be made (*Heirson's Case* (1880), 15 Ch.D. 139, C.A.; 10 Digest 996, 6912). A debentureholder, although an secured creditor, is a creditor within this section and is entitled to make the application (*Re Priestman, Alfred & Co. (1929), Ltd.*, [1936] 2 All E.R. 1340).

Stay of proceedings.—See section 256.

Definitions.—"Contributory" (section 213); "company", "registrar of companies", "the Court" (section 455 (1)).

308. Power of court in Scotland to stay proceedings against company.—(1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the staying of proceedings against a company registered in England and in course of being wound up.

NOTES

The section reproduces section 253 of the 1929 Act.

Direction by Court.—The effect of any such direction is to place the company in exactly the same position as regards the matters mentioned in subsection (1) *supra*, as a company being wound up compulsorily in England (see also section 231).

309. Costs of voluntary winding up.—All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

NOTES

The section reproduces section 254 of the 1929 Act.

Costs of a winding up.—See section 267 (Court's power to order costs to be paid out of assets). If the assets are insufficient to pay the costs, the liquidator is not liable for the deficiency (*Re Trueman's Estate, Hooke v. Piper* (1872), L.R. 14 Eq. 278; 10 Digest 993, 6879). If an order is made continuing a voluntary winding up under supervision, the costs of the voluntary liquidator incurred prior to such order have priority over the petitioner's costs of obtaining the supervision order (*Re New York Exchange Co.*, [1893] 1 Ch. 371; 10 Digest 1050, 7340), but not his remuneration (*Re Sanitary Burial Association*, [1900] 2 Ch. 289, C.A.; 10 Digest 1001, 6950). The usual rule as to the costs of drawing bills of costs applies to a voluntary liquidator (*Re National Bank of Wales*, [1902] 2 Ch. 412; 10 Digest 884, 6011).

Remuneration of liquidator.—See sections 242, 285 and 296 (compulsory and voluntary winding up, respectively).

All other claims.—I.e., at the date of the winding up (as to which, see section 229). Costs, etc., in a liquidation take priority over preferential payments (as to which, see section 319).

310. Saving for rights of creditors and contributories.—The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

NOTES

The section reproduces section 255 of the 1929 Act.

Application by a contributory or creditor for compulsory order.—Normally, the Court will make a compulsory order if it is alleged that transactions require investigation (*Re Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230, at p. 237), or presumably, if a *prima facie* case of malpractice is made out (*Re National Debenture and Assets Corporation*, [1891] 2 Ch. 505, C.A.). See further 5 Halsbury's Laws (2nd Edn.) p. 551, note (b).

Contributories' petition.—See sections 224, 225. It should be noted that the present section makes a voluntary winding up a bar unless the Court is satisfied that the rights of the contributories will be prejudiced by that type of winding up. This condition is not applicable in the case of a creditor presenting a petition for a compulsory winding up.

Creditors' petition.—A petition for a compulsory order may supersede a voluntary resolution to wind up if the directors make default in complying with section 283. In general, the right of a creditor to have a compulsory order is absolute (see *Re Bank of South Australia* (2), [1895] 1 Ch. 578, C.A., at p. 595; 10 Digest 991, 6861; see also sections 222 and 346). Under this section, a judgment creditor is entitled *ex debito justitiæ* to an order for compulsory winding up (*Re Milward (J.) & Co., Ltd.*, [1940] Ch. 333; [1940] 1 All E.R. 347), but as between himself and the other creditors the old rule remains that the Court must consider the wishes of all creditors (*Re Home Remedies, Ltd.*, [1943] Ch. 1; [1942] 2 All E.R. 552).

Winding up by Court.—See sections 222, *et seq.*

Voluntary winding up.—See sections 278, *et seq.*

Definitions.—"Contributory" (section 213); "company", "the Court" (section 455 (1)).

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

311. Power to order winding up subject to supervision.—When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

NOTES

The section reproduces section 256 of the 1929 Act.

Voluntary winding up.—See section 278.

Supervision order.—The section applies to all kinds of voluntary winding up and a supervision order may be made where an ordinary resolution has been passed under section 278 (1) (a), *ante*. The order is in the discretion of the Court which presumably will be exercised having regard to the wishes of the creditors and contributories. Their wishes in the matter may be expressed by means of the machinery provided by section 346, although it should be noted that under section 267, a creditor or contributory may apply to the Court to determine any question arising in the winding up. For the effect of a supervision order see sections 226, 231, and sections 312, 313, 315. For the form of order under the 1929 Act, see Companies (Winding-up) Rules, 1929, Form No. 18. There is no reason to suppose that the form will be any different under this Act.

Grounds for applying for supervision order.—The Court will not make an order on a contributory's petition unless a case of fraud or improper or corrupt influence is made out (*Re Bank of Gibraltar and Malta* (1865), 1 Ch. App. 69; 10 Digest 1047, 7307). Misconduct by a liquidator is not of itself a ground for making a supervision order (*Re Imperial Bank of China, India and Japan* (1866), 1 Ch. App. 339; 10 Digest 1042, 7259). The same applies in the case of a creditor's petition on these grounds (see *Re London and Mediterranean Banking Co.* (1866), 15 W.R. 33, at p. 34), although if he could show that the assets were misapplied, it would seem he could apply for an order under section 310 (*Re Caerphilly Colliery Co., Ex parte Dolling* (1875), 32 L.T. 15; 10 Digest 1037, 7198). A creditor with an unliquidated claim for damages must

first obtain judgment before he can petition (*Re Pen-y-Van Colliery Co.* (1877), 6 Ch.D. 477; 10 Digest 1046, 7285). A supervision order may be made in lieu of a compulsory order where the latter is applied for (*Re West Hartlepool Ironworks Co.* (1875), 10 Ch. App. 618; 10 Digest 1041, 7249). As to amending a petition for a compulsory order to one asking for a supervision order, see *Hodgkinson v. Kelly* (1868), L.R. 6 Eq. 496. The Court will not make an order unless the resolution for voluntary winding up were properly passed (*Re Bridport Old Brewery Co.* (1867), 2 Ch. App. 191; 10 Digest 987, 6835).

Other related provisions.—Section 312 (petition for supervision order); section 314 (appointment and removal of liquidators); section 315 (effect of supervision order).

Definitions.—"Contributory" (section 213); "resolution for voluntary winding up" (section 278); "company", "the Court" (section 455 (1)).

312. Effect of petition for winding up subject to supervision.

—A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

NOTES

The section reproduces section 257 of the 1929 Act.

Jurisdiction of Court over actions.—See sections 226, 231. If an action by the company is continued with leave after the supervision order and judgment is given for the defendant with costs, the costs are payable in full, even if the order giving leave is silent on the subject (*Re London Drapery Stores*, [1898] 2 Ch. 684; 10 Digest 1050, 7343).

Service of Petition.—See Companies (Winding-up) Rules, 1929, rule 28. See also *Re Petroleum Co.* (1866), 15 L.T. 169; 10 Digest 984, 6810. If the petition is by the liquidator alone, the company must be served (*Re Pannonia Leather Cloth Co., Ltd.* (1865), 13 W.R. 1015, n.; 10 Digest 1046, 7291). For form of petition, see Companies (Winding-up) Rules, 1929, rule 25, Forms 4, 5. It should state that the resolution for voluntary winding up was duly passed on a certain date, and should state the terms thereof. The practice is virtually the same as on petitions for a compulsory order down to and including the completion of the order (see sections 224 to 228).

313. Application of ss. 227 and 228 to winding up subject to supervision.—A winding up subject to the supervision of the court shall, for the purposes of sections two hundred and twenty-seven and two hundred and twenty-eight of this Act be deemed to be a winding up by the court.

NOTE

The section corresponds with section 258 of the 1929 Act.

314. Power of court to appoint or remove liquidators.—(1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

NOTES

The section reproduces section 259 of the 1929 Act.

Liquidator.—A body corporate cannot be appointed liquidator, see section 335. If the company, in passing a resolution for voluntary winding up, has omitted to appoint any liquidator, one may be appointed by the supervision order (*Re London Quays and Warehouses Co.* (1868), 3 Ch. App. 394; 10 Digest 1044, 7264).

Liquidator's powers.—See sections 287, 298, 303 and 307.

Appointment of liquidator.—See sections 285, 286, 294, 297 and 304.

Liquidator's security.—Where a voluntary winding up is continued under supervision and the voluntary liquidator has not given security, an additional liquidator appointed by the Court in supervision proceedings is required to give security (*Re Hampshire Land Co.*, [1894] 2 Ch. 632; 10 Digest 1044, 7269).

Removal of liquidator.—See also section 304, *ante*. In the last-mentioned section, the liquidator may only be removed on cause shown. Cause must also be shown when the voluntary winding up is continued under supervision (see also *Re Montrotier Asphalt and Cement Concrete Paving Co., Ltd.* (1874), 22 W.R. 895; 10 Digest 1046, 7283).

315. Effect of supervision order.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of subsection (1) of section two hundred and forty-five of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act specified in the Eleventh Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section two hundred and fifty-three, (except subsection (1) thereof) and section two hundred and fifty-five of this Act except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

NOTES

The section combines section 260 of the 1929 Act and section 95 (4) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of changes.—See a similar provision in section 303, where the effect of the change introduced by section 95 (4) of the 1947 Act is explained in the notes to that section.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

316. Debts of all descriptions may be proved.—In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

NOTES

The section reproduces section 261 of the 1929 Act.

The effect of the section is that in the case of a *solvent* company, all claims as provided for by the section are admissible to proof, unless the debt is such that no proof is necessary (e.g., see section 319). As to a debt due to a body corporate, see section 139. As to what debts are admissible to proof in the case of an *insolvent* company, see section 317. A distinction will there be noted as to the debts admissible for proof between a solvent and an insolvent company.

Application of law of bankruptcy.—See section 317.

Debts admissible for proof.—The following notes apply only to the case where the company is solvent (as to which, see section 283). A trustee for a company in liquidation of shares in another company is entitled to prove for calls present and future in certain cases (*Re National Financial Co., Ex parte Oriental Commercial Bank* (1868) 3 Ch. App. 791; 10 Digest 930, 6372) and as to interest in such an instance, see *Re Agricultural Wholesale Society*, [1929] 2 Ch. 261; Digest Supp.). Wages and salaries must be paid in priority to all other claims (see section 319). A winding-up order operates as notice of discharge to the company's servants (*Chapman's Case* (1866), L.R. 1 Eq. 346; 9 Digest 536, 3528; but see also *Shirreff's Case* (1872), L.R. 14 Eq. 417; 10 Digest 929, 6364, as to whether a voluntary winding up is notice of discharge). Compensation may be allowed in lieu of commission to a commercial traveller in certain cases (*Re Patent Floor Cloth Co., Dean and Gilbert's Claim* (1872), 26 L.T. 476; 10 Digest 929, 6367). Voluntary pensions are not provable (*Re Birkbeck Permanent Benefit Building Society*, [1913] 1 Ch. 400; 10 Digest 929, 6368). A contributory may prove for debts in certain cases (*Re Humber Ironworks Co.* (1869), L.R. 8 Eq. 122; 10 Digest 924, 6341, but see also *Re Imperial Land Co., of Marseilles, Ltd., Levick's Case* (1870), 40 L.J. Ch. 180; 9 Digest 94, 393). Contingent claims are provable in certain cases (*Re Blackpool Motor Car Co., Ltd., Hamilton v. Blackpool Motor Car Co., Ltd.*, [1901] 1 Ch. 77; 10 Digest 977, 6746, see also *Re Armstrong Whitworth Securities Co., Ltd.*, [1947] Ch. 673). As to proofs by policy holders and annuitants, see the Assurance Companies Act, 1909, section 17, Sixth Schedule. See generally as to proofs in winding up under the 1929 Act, Companies (Winding-up) Rules, 1929, rules 89 to 116.

Future debts.—E.g., a bill of exchange due after the commencement of winding up. See generally Companies (Winding-up) Rules, 1929, rule 99.

Valuation of claim.—For the purposes of proof in a winding up, the estimation of the value of the claims at its commencement must be arrived at by a consideration of the position at that date (*Re Parana Plantations, Ltd.*, [1948] 1 All E.R. 742).

317. Application of bankruptcy rules in winding up of insolvent English companies.—In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

NOTES

The section reproduces section 262 of the 1929 Act.

The effect of the section is that in the case of an *insolvent* company, the debts admissible for proof are subject to the rules in force under the law of bankruptcy in England. (As to the rules applicable in the case of a company registered in Scotland, see section 318.) The section, however, does not introduce into winding up the bankruptcy rules as to (i) reputed ownership (*Re Crumlin Viaduct Works Co.* (1879), 11 Ch. D. 755; 10 Digest 934, 6405); (ii) landlord's right to distrain for rent due before the winding up (*Re Coal Consumers' Association* (1876), 4 Ch.D. 625; 10 Digest 967, 6642. See also section 25 of the Bankruptcy Act, 1914 (1 Halsbury's Statutes (625); but see section 319 (7) *post*). (iii) avoidance of bills of sale in certain cases (*Re D'Epineuil (Count)* (1), *Tadman v. D'Epineuil* (1882), 20 Ch.D. 217; 24 Digest 817, 8493); (iv) calculation of interest on debts for purposes of dividend (*Re Agricultural Wholesale Society*, [1929] 2 Ch. 261; Digest Supp.); (v) secured creditor as regards presenting petition in certain cases (*Moor v. Anglo-Italian Bank* (1879), 10 Ch.D. 681; 10 Digest 934, 6407); (vi) limitation of power of trustee in relation to copyright (*Re Health Promotion, Ltd.*, [1932] 1 Ch. 65; Digest Supp.). The following bankruptcy rules are, however, applicable as to *secured creditors* (Bankruptcy Act, 1914, Second Schedule, rr. 10 to 18; 1 Halsbury's Statutes 709, 710); r. 13 (redemption of security) (but see also the 1929 Winding-up Rules, r. 140, in which there is not likely to be any substantial change). For the meaning of "secured creditor", see the Bankruptcy Act, 1914, section 167 (1 Halsbury's Statutes 705), and also see *Re Safety Explosives, Ltd.*, [1904] 1 Ch. 226, C.A.; 10 Digest 950, 6503). As to restrictions on the rights of execution creditors, see sections 325, 326.

Insolvent company.—The section is applicable to any company in liquidation until it is shown that its assets are sufficient for payment of its debts in full (*Re Milan Tramways Co., Ex parte Theys* (1884), 25 Ch.D. 587, at p. 591, C.A.; 10 Digest 940, 6442, referred to in *Fryer v. Ewart*, [1902] A.C. 187, *per* Lord MacNaghten, at p. 192, H.L.; 10 Digest 996, 6906), including interest (*Re Whitaker, Whitaker v. Palmer*,

[1904] 1 Ch. 299; 24 Digest 820, 8520) and the expenses of winding up (*Re Leng, Tarn v. Emmerson*, [1895] 1 Ch. 652, C.A.; 24 Digest 815, 8484).

Set-off and mutual credits.—See sections 214, 259 and 320, 333.

Proofs for contingent claims.—See Bankruptcy Act, 1914, section 30 (1 Halsbury's Statutes 636). Claims contingent when the winding up commenced, but ascertained during the winding up, may be admitted to proof for the ascertained amount, but not so as to disturb previous dividends (*Re Northern Counties of England Fire Insurance Co., MacFarlane's Claim* (1880), 17 Ch.D. 337; 10 Digest 1089, 7620). As to the duty of the liquidator in such cases, see *Re Armstrong Whitworth Securities Co., Ltd.*, [1947] Ch. 673.

Disclaimer by liquidator.—See section 323.

Alteration of bankruptcy law.—Certain amendments in the bankruptcy law were effected by the 1947 Act, as to which, see *ibid.*, section 115, and notes thereto in Magnus and Estrin on the Companies Act, 1947.

318. Ranking of claims in Scotland.—In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,—

- (a) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;
- (b) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the company for references to the bankrupt, and with any other necessary modifications.

NOTE

The section reproduces section 263 of the 1929 Act.

319. Preferential payments.—(1) In a winding up there shall be paid in priority to all other debts—

- (a) the following rates and taxes,—

- (i) all local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date;

- (ii) all land tax, income tax, profits tax, excess profits tax or other assessed taxes assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

- (iii) the amount of any purchase tax due from the company at the relevant date, and having become due within twelve months next before that date;

- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;

- (c) any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date;

- (d) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;

- (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable

during the twelve months next before the relevant date by the company as the employer of any persons under the Unemployment Insurance Act, 1935, the National Health Insurance Act, 1936, the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946 ;

- (f) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section seven of the Workmen's Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act, being amounts which have accrued before the relevant date in satisfaction of a right which arises or has arisen in respect of employment before the fifth day of July, nineteen hundred and forty-eight (that is to say, the day appointed for the purposes of the National Insurance (Industrial Injuries) Act 1946) ;
- (g) the amount of any debt which, by virtue of subsection (5) of section three of the Workmen's Compensation (Coal Mines) Act, 1934, is due from the company to an insurer in respect of a liability in respect of the satisfaction of a right falling within the last foregoing paragraph.

(2) Notwithstanding anything in paragraphs (b) and (c) of the foregoing subsection, the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed two hundred pounds :

Provided that where a claimant under the said paragraph (b) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (f) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made—

- (a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary ; or
- (b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration ;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and

- (b) in the case of a company registered in England, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by paragraph (e) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section—

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period ;

(b) the expression “ accrued holiday remuneration ” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday ;

(c) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period ; and

(d) the expression “ the relevant date ” means—

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date ; and

(ii) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.

(9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section two hundred and sixty-four of the Companies Act, 1929, as originally enacted, occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not passed shall be deemed to remain in full force.

NOTES

The section combines section 264 of the 1929 Act (as amended by subsequent enactments) and section 91 of the 1947 Act, with the exception of subsection (3) (as to which, see section 358, *post*). The last-mentioned section came into force on July 1, 1948.

Effect of changes.—Under the 1929 Act (as amended by subsequent amending enactments), the right to priority was extended to (i) wages or salary of any clerk or servant during four months next before the relevant date, not exceeding £50, and (ii) wages of any workman or labourer up to £25 during the two months next before the relevant date with special provisions for labourers in husbandry. The maximum amount now recoverable is £200 in all cases (subsection (2)), and the period in respect of which it is recoverable is now four months in all cases (subsection (1) (b)). The result is that no distinction is now made between a manual and non-manual worker as regards priority in a winding up. Consequential amendments have been made as to compensation payable under the Reinstatement in Civil Employment Act, 1944 (37 Halsbury's Statutes 362), which is now £200 (instead of £50) (subsection (1) (c)), and the term "wages or salary" now includes holiday pay in certain conditions and as there defined (subsection (1) (d), (4), (8)). The definition of "relevant date" under the 1929 Act is superseded by the definition in subsection (8) (d), *supra*, except in its application to a winding up commenced before July 1, 1948, in which event the provisions of the 1929 Act apply.

Winding up.—See sections 222 (winding up by Court); 278 (voluntary winding up); 283 (members' voluntary winding up); 292 (creditors' voluntary winding up); 311 (supervisory order).

Other debts.—As to debts other than those ranking for preferential payment, see sections 316, 317, 318.

Rates and taxes.—This includes poor and district rates, water rate, rent for water meter, land drainage rates (*Re Ellwood*, [1927] 1 Ch. 455; Digest Supp.) and the spindles levy under the Cotton Spinning Industry Act, 1936 (*ibid.*, section 19); 29 Halsbury's Statutes 999. Crown debts, except taxes, are not preferential (this is implied from section 317, *ante*, and section 151 of the Bankruptcy Act. See also section 302, *ante*).

Assessed taxes.—This term is not confined to assessed taxes existing when the provision came into force (see *Re Winget, Ltd., Burn v. The Co.*, [1924] 1 Ch. 550). The General Commissioners have the duty of seeing that a proper assessment is made (*R. v. Income Tax Special Commissioners, Ex parte Elmhirst*, [1936] 1 K.B. 487, C.A.; Digest Supp.). H.M. Inspector of Taxes issues notices of assessments under Schedules B and D (Finance Act, 1944, section 26; 37 Halsbury's Statutes 320), including additional assessments (Income Tax Act, 1918, sections 125, 126; 9 Halsbury's Statutes 488, 489), and under Schedule A in certain cases (*ibid.*, section 77; 9 Halsbury's Statutes 465), as also has the Assessor (*ibid.*, section 113; 9 Halsbury's Statutes 482). For the powers of the Additional Commissioners, see *ibid.*, sections 120, 121 (9 Halsbury's Statutes 485), and as to the transfer of their powers to H.M. Inspector of Taxes, see section 1, Income Tax Procedure (Emergency Provisions) Act, 1939 (32 Halsbury's Statutes 1140). The Special Commissioners assess surtax and can also make assessments under Schedule D in certain cases (section 123 of the 1918 Act; 9 Halsbury's Statutes 487). Tax deducted from interest is not necessarily an assessed tax (*Re Lang Propeller, Ltd.*, [1927] 1 Ch. 120, C.A.; Digest Supp.).

One year's assessment.—The Inland Revenue are not restricted to any particular year and may prefer any one year's tax which was assessed up to 5th April next before the relevant date (see also *Gowers v. Walker*, [1930] 1 Ch. 262).

Clerk or servant.—To be so regarded there must be a contract of service (*Re General Radio Co., Ltd., First Co-operative Investment Trust, Ltd. v. The Co.*, [1929] W.N. 172; Digest Supp.).

Workman or labourer.—As, under the section, both classes are placed in the same position, no importance attaches to the distinction.

Commencement of the winding up (subsection (1) (f)).—See sections 229, 280.

Holiday remuneration.—See generally, the notes "Effect of changes", *supra*.

Circumstances where preferential rights do not apply.—There are three modifications of the general rule as to preferential payments under the section. Cases (i) and (ii) apply only in the case of a voluntary winding up for reconstruction purposes, etc. (i) workmen's compensation; (ii) Health, Unemployment, Old Age Pensions and National Insurance (subsection (1) (e), (f)), and case (iii) applies in all cases, namely distress levied on the goods and effects of the company in certain conditions (subsection (7)).

Subsection (4).—The effect of the subsection, which is to subrogate the lender to the rights of the preferential persons so paid, remains the same. See also the notes to "Effect of changes", *supra*.

Subsection (5).—Preferential payments rank in priority *after* secured creditors (section 325), and costs of liquidation (subsection (6), *supra*); but *before* any floating charge (subsection (5) (b), *supra*, but see also *Re Lewis Merthyr Consolidated Collieries, Ltd., Lloyds Bank v. The Co.*, [1929] 1 Ch. 498, C.A.; Digest Supp.; *Re Griffin Hotel Co., Ltd., Talley (Joshua) & Son, Ltd. v. Griffin Hotel Co., Ltd.*, [1941] Ch. 129. See also section 322).

Subsection (8).—Cf. as to relevant date, sections 229, 280.

Provisional liquidator.—See section 239.

Other related provisions.—Sections 206 to 209 (arrangements and reconstructions).

Definitions.—"Voluntary winding up" (section 283 (4)); "company" (section 455 (1)).

Effect of Winding Up on antecedent and other Transactions

320. Fraudulent preference.—(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made or done before the commencement of this Act, this subsection shall have effect with the substitution, for references to six months, of references to three months.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

(3) In the application to Scotland of this section, the expression "fraudulent preference" includes any alienation or preference which is avoidable by statute or at common law on the ground of insolvency or notour bankruptcy, the expression "bankruptcy petition" means petition for sequestration and for the words "three months" there shall be substituted the words "sixty days".

NOTES

The section combines section 265 of the 1929 Act and section 92 (1) of the 1947 Act. The last-mentioned provision came into force on July 1, 1948.

As to the other provisions of section 92 of the 1947 Act, see section 321, *post*.

Effect of changes.—The provisions of section 265 of the 1929 Act have been retained except that in the application of the principle of fraudulent preference, the period of three months (or 60 days in the case of Scotland) has been extended to six months.

Fraudulent preference.—A preference is deemed fraudulent when the substantial and dominant motive in the mind of the debtor company was to prefer one creditor or particular creditors (*Sharp v. Jackson*, [1899] A.C. 419; 5 Digest 883, 7318). It is not always easy in practice to establish that a payment was a fraudulent preference, but it should be noted that from the decision in *Re Kushler (M.), Ltd.*, ([1943] Ch. 248; [1943] 2 All E.R. 22, C.A.; 2nd Digest Supp.), it would seem that the payment to anyone otherwise than in the ordinary way of business within six months could imply an intention to prefer. For cases where payments were held not to be a fraudulent preference, see *Sharp v. Jackson*, *supra*; *Re Patent File Co., Ex parte Birmingham Banking Co.* (1870), 6 Ch. App. 83; 10 Digest 976, 6736; *Re Vaulin, Ex parte Saffery*, [1900] 2 Q.B. 325; 5 Digest 888, 7340; *Re Stanley (G.) & Co.*, [1925] Ch. 148; Digest Supp.). But a mere sense of moral obligation is not sufficient to prevent the preference being fraudulent (*Buckley's Case*, [1899] 2 Ch. 725; 10 Digest 977, 6745), and an act may be a fraudulent preference though involving no moral blame at all (*Re Patrick and Lyon, Ltd.*, [1933] Ch. 736; Digest Supp.). See also 5 Halsbury's Laws (2nd Edn.), pp. 704-706.

Bankruptcy.—The section applies the bankruptcy law for the time being in force (*Re Liverpool and London Guarantee and Accident Insurance Co., Gallagher's Case* (1882), 46 L.T. 54; 10 Digest 974, 6728). As to the law relating to fraudulent preference in bankruptcy, see 2 Halsbury's Laws (2nd Edn.), pp. 367 *et seq.* The mutual credit clause of the bankruptcy law does not apply (*Kent's Case* (1888), 39 Ch.D. 259, C.A.; 10 Digest 977, 6742). See also *Re Washington Diamond Mining Co.*, [1893] 3 Ch. 95, C.A., explained *Re Fowler (B.P.), Ltd.*, [1938] Ch. 113).

Misfeasance proceedings.—Where a payment is void as in fraudulent preference of directors or other officers of the company, misfeasance proceedings may be taken to recover the amount paid (*Re Washington Diamond Mining Co., supra*). As to misfeasance proceedings, see section 334.

Company being wound up.—I.e., by compulsory order (section 222), or voluntary winding up by members (sections 278, 283), or voluntary winding up by creditors (sections 278, 292), or under a supervision order (section 311).

Commencement of the Act.—See section 462.

Commencement of winding up.—See sections 229, 280, 283 (5), 311.

Creditors.—For the purpose of fraudulent preference a creditor is anyone who has a right of proof in winding up, and therefore, would include a surety under a contingent liability (*Re Blackpool Motor Car Co., Ltd.*, *Hamilton v. Blackpool Motor Car Co., Ltd.*, [1901] 1 Ch. 77; 10 Digest 977, 6746). See also sections 316, 317.

Winding up in Scotland.—The Act of Parliament of Scotland, 1696, c. 5, contains provisions similar to those contained in section 44 of the Bankruptcy Act, 1914 (1 Halsbury's Statutes 649), except that, in place of the period of three months, the Scottish Act provided for a period of sixty days within which such transactions might be impeached. The period is now six months both in England and in Scotland.

Other related provisions.—Section 321 (liabilities, etc., of fraudulently preferred persons); sections 325, 326 (executions); section 330 (fraud); section 332 (fraudulent trading).

321. Liabilities and rights of certain fraudulently preferred persons.—(1) Where, in the case of a company wound up in England, anything made or done after the commencement of this Act is void under the last foregoing section as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

NOTES

The section reproduces section 92 (2) to (4) of the 1947 Act which came into force on July 1, 1948. As to section 92 (1) of that Act, see section 320, *ante*.

The effect of the section is that where a company fraudulently prefers a surety or guarantor, the liquidator is entitled to reclaim the moneys so paid from the principal creditor concerned. The person making that refund is now entitled to recover from the surety or guarantor within the limit of his guarantee or of the security he had provided, the sum he has been compelled to repay to the liquidator (subsection (1)). The extent of the liability of a surety who is not personally liable is the value of the property charged at the date when the transaction took place (subsection (3)). The Court has jurisdiction to determine any such question and to order repayment by the surety or guarantor to the extent of his liability, even though it is unconnected with the winding-up proceedings and for that purpose the surety or guarantor may be brought in as a third party in the same action. These provisions are not affected by the fact that the transaction did not involve the payment of money (subsection (3)).

Winding up in England.—See section 211. The position in Scottish law is not affected.

Commencement of the Act.—See section 462.

Fraudulent preference.—See section 320.

Fraudulent preference of a person interested.—Cf. Bankruptcy Act, 1914, section 44 (1 Halsbury's Statutes 649). The principle here is that the person to whom the payment was made is obliged to refund to the liquidator the sum received (*Re Stanley (G.) & Co.*, [1925] Ch. 148; Digest Supp.). The person making the refund now has a right of recovery from the surety or guarantor to the extent mentioned in subsection (3), *supra*. This provision embodies the decision in *Re Conley*, [1938] 2 All E.R. 127, C.A.; Digest Supp., where it was held that the term "surety" was not confined to one who undertakes a personal liability, but includes one who merely charges his property for the debt of another. As to sureties and guarantors generally, see 16 Halsbury's Laws (2nd Edn.), pp. 3 *et seq.*

Liability of surety.—A surety cannot be made liable for more than he has undertaken (*Warre v. Calvert* (1837), 7 Ad. & El. 143; 26 Digest 103, 713). Subsection (2), *supra*, therefore, will apply only to the extent that a surety can be held liable under the contract of suretyship or any agreement made on the payment of the money to the principal debtor, and any express stipulation to the contrary will override the provisions of this subsection.

Value at the date of the transaction.—The extent of the liability of a surety who is not personally liable is the value of the property charged at the date when the transaction took place. Any subsequent appreciation or depreciation in the value of that property will not entitle the creditor to take advantage of the appreciation or disentitle him to recover the extent of the depreciation.

Proceedings for recovery under subsection (2).—The provision applies only to an application by a liquidator to recover payments alleged to be a fraudulent preference of a surety, etc., and not to applications for the repayment of other sums alleged to be a fraudulent preference. The purpose is to enable the principal creditor to exercise his right of recovery from a surety, etc., in the same proceedings, without the necessity to take separate proceedings for such recovery.

Surety or guarantor brought in as third party.—This would be done under R.S.C., Order 16A, by "third party notice" after leave obtained from the Court or Judge on *ex parte* application by affidavit, or, where the Court or Judge directs a summons to the plaintiffs to be issued, upon the hearing of the summons (*ibid.*, rule 1 (2)). See generally, as to Third Party Procedure, Order 16A and notes thereto in the Annual Practice. This provision overrules *Re Singer & Co. (Hat Manufacturers), Ltd.*, [1943] Ch. 121; [1943] 1 All E.R. 225, C.A.

Definitions.—"Company", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

322. Effect of floating charge.—(1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury:

Provided that, in relation to a charge created more than six months before the commencement of this Act, this section shall have effect with the substitution, for the words "twelve months", of the words "six months".

(2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

The section combines section 266 of the 1929 Act, and sections 93 and 120 (3) of the 1947 Act. Section 120 (3) of the 1947 Act came into force on December 1, 1947 and *ibid.*, section 93 came into force on July 1, 1948.

Effect of changes.—(i) *Validity of floating charge.* Section 266 of the 1929 Act invalidated the floating charges here specified if created within six months before the commencement of a winding up. That period is now extended to twelve months. Charges created more than six months before July 1, 1948, are not affected. (ii) *Variation of rates of interest.* The Treasury is given power by order from time to time to vary the rates of interest payable under subsection (1), *supra*, such power to be exercisable by statutory instrument.

Extension of period to twelve months.—The effect is to afford greater protection to creditors, and the section, where it is applicable, merely invalidates the charge (subsection (1)).

Company being wound up.—See also note under the same heading to section 320.

Floating charge.—See also section 94. The term "floating charge" means a charge which is not put into immediate operation, but is to "float", so that the company is to be allowed to carry on its business (see *Illingworth v. Houldsworth*, [1904] A.C. 355, per Romer, L. J., at p. 358; 10 Digest 750, 4690). It is the essence of a floating charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes (*Government Stock and Other Securities Investment Co. v. Manila Rail. Co.*, [1897] A.C. 81, at p. 81, H.L.; 10 Digest 761, 4758). See generally, 5 Halsbury's Laws (2nd Edn.), pp. 480 to 486. See also *Re Parkes Garage (Swadlincote), Ltd.*, [1929] 1 Ch. 139; Digest Supp.; *Re Ellis (Matthew), Ltd.*, [1933] Ch. 458, C.A.; Digest Supp.

Company was solvent.—A company is not solvent unless it can pay its debts as they become due and the fact that the assets exceed the liabilities is not of itself sufficient in deciding that question (*Re Patrick and Lyon, Ltd.*, [1933] Ch. 786; Digest Supp.). Fixed assets are not to be taken into account when deciding solvency (*Hodson v. Blanchards (London), Ltd.* (1911), 131 L.T. Jo. 9; 10 Digest 752, 4702).

Invalid except as to the amount of cash paid.—The charge is valid to the extent of cash paid to the company which the company is free to deal with as it wishes (*Re McCleave & Co., Ltd.* (1913), 47 I.L.T. 214; 10 Digest 753, 4707 i). See, however, *Re Ellis (Matthew), Ltd.*, [1933] Ch. 458, C.A.; Digest Supp. Where the cash is paid not to benefit the company, but to benefit certain creditors to the prejudice of others, it is invalid (*Re Destone Fabrics, Ltd.*, [1941] Ch. 319; [1941] 1 All E.R. 545; 2nd Digest Supp.). The question whether the cash was paid at the time of the creation of the charge is one of fact, and a payment made shortly before and in anticipation of the charge in reliance on a promise to execute it is made at the time of its creation (*Re Columbian Fireproofing Co., Ltd.*, [1910] 2 Ch. 120, C.A.; 10 Digest 753, 4708).

Rates prescribed by order of the Treasury.—See note "Effect of changes", *supra*.

Commencement of this Act.—See section 462 (2). Charges within the terms of the proviso to subsection (1), *supra*, are not affected.

Regulations by statutory instrument.—See the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 783).

Other related provisions.—Section 319 (5) (priority of preferential payments over floating charges); section 372 (provisions where receiver or manager appointed).

Definitions.—"Company", "prescribed" (section 455 (1)).

323. Disclaimer of onerous property in case of company wound up in England.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as underlessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ; and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) This section shall not apply in the case of a winding up in Scotland.

NOTES

The section reproduces section 267 of the 1929 Act.

The effect of the section is that, in a winding up in England, onerous property can be disclaimed by the liquidator (subsection (1)). The purpose of the disclaimer is to release the company and its property from liability, but the rights of third parties are not thereby affected (subsection (2)), as they are entitled to prove in the winding up (subsection (7)). Leave to disclaim must be obtained from the Court (subsection (3)). Provision is made for any interested person to require the liquidator to state whether or not he will disclaim, and that right will be lost if he does not give notice of his intention to apply for leave to disclaim within 28 days of receiving application as aforesaid. If, under this rule, the liquidator does not disclaim a contract, the company will be deemed to have adopted it (subsection (4)). Any person adversely affected by the foregoing subsection is entitled to the protection of the Court (subsection (5)). Subsection (6) carries on the principle in subsection (2) as regards the disclaimer operating to the detriment of third parties and provides that any person so affected may apply to the Court for a vesting order. Special provision is made in that respect where a lease is disclaimed.

The section reproduces, with some modifications, section 54 of the Bankruptcy Act, 1914 (1 Halsbury's Statutes 655), as to which, see generally, 2 Halsbury's Laws (2nd Edn.), pp. 254 to 261. The main difference is that in a winding up, the liquidator must obtain the consent of the Court to disclaim in every case, whereas a trustee in bankruptcy need not, except in the case of certain leases.

Onerous property.—In a winding up, the property of a company does not vest in the liquidator unless the Court so orders (see section 244). Consequently, he has no personal liability as regards any onerous property with which the company may be burdened. Creditors and contributories, however, may be better off if the company were not saddled with either worthless possessions or contracts which were burdensome. The section, therefore, gives effect to that principle by giving the liquidator power to disclaim in certain conditions (as to which, see subsection (3), *supra*). That power, however, is subject to modification (see subsection (4), *supra*). In considering the question of onerous property, see *Wise v. Lansdell*, [1921] 1 Ch. 420; 9 Digest 410, 2638.

Form of disclaimer.—For the forms under the 1929 Act, see Companies (Winding-up) Rules, 1929, Forms Nos. 35, 36.

Time for disclaimer.—The power to disclaim must be exercised within twelve months after the commencement of the winding up (subsection (1)) or such extended period as there allowed (*ibid.*). Note, however, the qualification thereto in subsection (4), *supra*.

Commencement of winding up.—See sections 229, 280.

Subsection (2).—The subsection deals with the effect of a disclaimer and should be read with subsections (6), (7).

Leave to disclaim.—For the procedure under the 1929 Act on an application for leave to disclaim, see Companies (Winding-Up) Rules, 1929, rule 73. Before exercising its discretion, the Court will consider its effect on interested parties and may refuse leave where it would operate to release from liability persons who had guaranteed payment of rent under a lease or the performance of other covenants contained therein (*Re Katherine et Cie, Ltd.*, [1932] 1 Ch. 70; Digest Supp.).

Vesting order.—For the procedure under the 1929 Act on an application for a vesting order, see Companies (Winding-up) Rules, 1929, rule 74.

Commencement of winding up.—See sections 229, 280.

Debt provable in a winding up.—See section 316.

Other related provisions.—Section 354 (*bona vacantia*); sections 222, 278, 283, 292, 311 (company being wound up).

Definitions.—"Company", "share", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "writing" (*ibid.*, section 20).

324. Liability for rentcharge on company's land after disclaimer.—(1) Where on a disclaimer under the last preceding section land in England vests subject to a rentcharge in the Crown or any other person that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.

(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.

(3) This section shall apply to land vesting and sums accruing due before, as well as after, the commencement of this Act.

NOTES

The section corresponds with section 99 of the 1947 Act, which came into force on July 1, 1948.

General note.—The section is a corollary to section 355 (see also section 356). The present section provides that where land subject to a rentcharge vests by operation of English law in the Crown or in some mesne landlord, the Crown or mesne landlord is under no personal liability for the rentcharge, provided they do not take possession or control of the land, or enter into occupation of it. An owner of the rentcharge is not debarred from enforcing his remedy against the land, but he is deprived of any rights he may otherwise have had to sue the Crown or the mesne landlord in respect of any period *before* the Crown or mesne landlord exercised some act of ownership (subsections (1), (2)). The section is retrospective in its operation.

Commencement of the Act.—See section 462.

325. Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up :

Provided that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up ;
- (b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator ; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression “goods” includes all chattels personal, and the expression “sheriff” includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

NOTES

The section combines section 268 of the 1929 Act and section 96 (4) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of changes.—Subsection (1) (c), *supra*, embodies a minor amendment to the 1929 Act relating to procedure, the effect of which is that the Court now has discretion to override, in favour of an execution creditor of a company in liquidation, the proviso to subsection 1 (a), (b). This amendment incorporates section 96 (4) of the 1947 Act. As to a similar amendment in the Bankruptcy Law, see section 115 (2) of the 1947 Act.

General note.—The section provides, in effect (subject to the provisos to subsection (1), *supra*, that certain executions in England against a company's property, though begun before a liquidation, are not good against a liquidator (cf. section 40 of the Bankruptcy Act, 1914. as to which, see 2 Halsbury's Laws (2nd Edn.), pp. 355 to 358).

Commencement of winding up.—See sections 229, 280. In this section see, however, proviso (a) to subsection (1), *supra*.

Execution issued after petition presented.—See section 228.

Completed executions.—The provisions of subsection (2), *supra*, are not exhaustive, but descriptive (*Re Fairley*, [1922] 2 Ch. 791, *per* Astbury, J., at p. 795; Digest Supp.).

326. Duties of sheriff as to goods taken in execution.—(1) Subject to the provisions of subsection (3) of this section, where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section the expression “goods” includes all chattels personal, and the expression “sheriff” includes any officer charged with the execution of a writ or other process.

(5) This section shall not apply in the case of a winding up in Scotland.

NOTES

The section combines section 269 of the 1929 Act and section 96 (4) of the 1929 Act. The latter section came into force on July 1, 1948.

Effect of changes.—Subsection (3), *supra*, incorporates section 96 (4) of the 1947 Act, and effects a minor amendment relating to matters of procedure similar to that effected in section 325 (1), by providing in effect, that the Court has discretion to override in favour of an execution creditor of a company in liquidation, the provisions of subsections (1), (2), *supra*.

The section introduces into the winding up of a company the provisions applicable in a bankruptcy which deprive an execution creditor of the proceeds of an execution (see section 41 of the Bankruptcy Act, 1914; 1 Halsbury's Statutes 646).

Completion of execution.—See section 325. A sheriff proceeding with an execution must, if he has received notice of liquidation before he has sold, hand the proceeds over to the liquidator (*Woolford's Estate Trustee v. Levy*, [1892] 1 Q.B. 772, at p. 779, C.A.; 5 Digest 816, 6936). He may also be required to deliver up the goods to the liquidator (*Re Harrison, Ex parte Essex (Sheriff)*, [1893] 2 Q.B. 111; 5 Digest 823, 6990).

Landlord and execution creditor.—The landlord is entitled to be paid, in certain conditions, out of the proceeds of a sheriff's sale in priority to the liquidator (*Re MacKenzie, Ex parte Hertfordshire (Sheriff)*, [1899] 2 Q.B. 566, C.A.; 18 Digest 344, 796); but cf. *Re Craig & Sons, Ex parte Hinchcliffe*, [1916] 2 K.B. 497; 5 Digest 820, 6968 (but the liquidator must refund the proceeds received from the sheriff to an execution creditor if the latter has paid the landlord in full) (*ibid.*). A sheriff who receives notice of a petition and obtains leave of the liquidator to sell, must

account for the whole proceeds of the sale to the liquidator, if he failed to disclose the landlord's claim (*Re Driver, Ex parte Official Receiver* (1899), 80 L.T. 840 ; reversed on another point *sub nom. Re Driver, Ex parte Lancashire (Sheriff)*, 43 Sol. Jo. 705, C.A. ; 5 Digest 820, 6967).

Costs of execution.—The costs of execution refer only to the sheriff's costs and do not include the creditor's costs of issuing and serving the writ of *fiery facias* (*Re Woods (Bristol), Ltd.*, [1931] 2 Ch. 320 ; Digest Supp.).

Subsection (2).—The effect of the subsection is to deprive an execution creditor in respect of a judgment exceeding £20 of the proceeds of the execution, which goes to the liquidator, provided, of course, that notice of the presentation of a petition for winding up or of a resolution for a voluntary winding up is served on him within fourteen days from the date of sale. The fourteen days run from the date of the sale and not from the date of the receipt of the proceeds (*Re Cripps, Ross & Co., Ex parte Ross* (1888), 21 Q.B.D. 472 ; 5 Digest 817, 6946).

Taxation of sheriff's costs.—See Companies (Winding-up) Rules, 1929, rules 187, 188.

Presentation of petition for winding up.—See section 224.

Resolution for voluntary winding up.—See section 278.

Provisional liquidator.—See section 238.

327. Effect of diligence within 60 days of winding up in case of Scottish company, and in case of effects in Scotland of English company.—(1) In the winding-up of a company registered in Scotland, the following provisions shall have effect :—

- (a) the winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding, and no arrestment or poinding of the funds or effects of the company executed on or after the sixtieth day prior to that date shall be effectual, and those funds or effects or the proceeds of those effects if sold shall be made furthcoming to the liquidator :

Provided that any arrester or pointer before that date who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense bona fide incurred by him in such diligence ;

- (b) the winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided ;
- (c) the provisions of sections one hundred and eight to one hundred and thirteen and of section one hundred and sixteen of the Bankruptcy (Scotland) Act, 1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid, and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding-up" and "liquidator," and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland ;
- (d) no poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator :

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the date aforesaid, but that poinding shall in competition with the liquida-

tor be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

NOTES

The section reproduces section 270 of the 1929 Act.

Commencement of a winding up.—See sections 229, 280.

" The Court " as defined with respect to Scotland.—See sections 220, 221.

Offences antecedent to or in course of Winding Up

328. Offences by officers of companies in liquidation.—(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company ; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards ; or
- (f) makes any material omission in any statement relating to the affairs of the company ; or
- (g) knowing or believing that a false debt has been proved by any person under the winding-up, fails for the period of a month to inform the liquidator thereof ; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company ; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making

- of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ; or
 - (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses ; or
 - (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or
 - (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or
 - (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company ; or
 - (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up ;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months :

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—

- (a) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour ;
- (b) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to

imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

NOTES

The section reproduces section 271 of the 1929 Act, except for a minor drafting amendment as to persons liable for the specific offences there stated, effected by section 122 (4) and the Seventh Schedule to the 1947 Act, which came into force for certain purposes on December 1, 1947, and for other purposes on July 1, 1948. The effect of the section remains unchanged.

General note.—The section is analogous to the bankruptcy provisions (see section 154 of the Bankruptcy Act, 1914, as amended by section 5 of the Bankruptcy (Amendment) Act, 1926 and 2 Halsbury's Laws (2nd Edn.) pp. 458 *et seq.*).

Company being wound up.—*Compulsory order*—see section 222; *voluntary*—see sections 278, 284, *et seq.*, 292, *et seq.*; *supervision order*—see section 311, *et seq.*

Delivery of property to liquidator.—See section 258. As to conspiracy to remove goods, see *Heymann v. R.* (1873), L.R. 8 L.B. 102; 5 Digest 1045, 8532. See also section 330 (c).

Commencement of winding up.—See sections 229, 280.

Omission of matters relating to the affairs of the company.—See section 236.

Debts of the company.—See section 260 and as to proof of debts, see sections 316, 317.

Falsification of books.—See section 329.

Fraud by officers.—See section 330.

Onus of proof.—The onus is upon the prosecution in the first instance (*R. v. Brixton Prison (Governor), Ex parte Shure*, [1926] 1 K.B. 127; Digest Supp.). But once the prosecution has shown the concealment or other facts on which the offence is alleged, the accused must then establish absence of intent to defraud or conceal or other defence under the proviso to subsection (1) (*ibid.*).

Definitions.—"Resolution for voluntary winding up" (section 278); "book and paper", "company", "document", "officer" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

329. Penalty for falsification of books.—If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

NOTES

The section reproduces section 272 of the 1929 Act, except for a minor drafting amendment as to persons liable for the specific offence here stated, effected by section 122 (4) and the Seventh Schedule of the 1947 Act, which came into force for certain purposes on December 1, 1947, and for other purposes on July 1, 1948. The effect of the section remains unchanged.

Penalties for false statements.—See section 438.

Fraud by officers.—See sections 330, 332.

Prosecutions.—See generally, section 334.

Register, books of account, etc.—See section 436.

Definitions.—"Contributory" (section 213); "book and paper", "company", "document", "officer" (section 455 (1)).

330. Frauds by officers of companies which have gone into liquidation.—If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up,—

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company ;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company ;
- he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

NOTES

The section reproduces section 273 of the 1929 Act, except for a minor drafting amendment as to persons liable for the specific offence here stated, effected by section 122 (4) and the Seventh Schedule of the 1947 Act, which came into force for certain purposes on December 1, 1947, and for other purposes on July 1, 1948. The effect of the section remains unchanged.

The section is based on section 156 of the Bankruptcy Act, 1914, as amended by section 6 of the Bankruptcy (Amendment) Act, 1926, as to which, see 2 Halsbury's Laws (2nd Edn.), pp. 465, 466.

Officer of the company.—See also section 333.

Winding up by the Court.—See section 222.

Obtain credit by false pretences.—Cf. section 328 (1) (n). Intent to defraud is necessary (*R. v. Brownlow* (1910), 74 J.P. 240, C.C.A. ; 5 Digest 1050, 8565).

Fraudulent removal of property.—Cf. section 328 (1) (e).

Transfer of property.—Cf. section 227, *ante*; *Re Cranston, Ex parte Cranston* (1892), 8 T.L.R. 564 ; 5 Digest 1046, 8537.

Definitions.—"Resolution for voluntary winding up" (section 278) ; "company", "officer", "the Court" (section 455 (1)) ; "person" (Interpretation Act, 1889, section 19).

331. Liability where proper accounts not kept.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

NOTES

The section^w combines section 274 of the 1929 Act and sections 101 (3), 105 (1), Schedule V of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—The doubt under the 1929 Act whether officers of a company being wound up within two years of its incorporation could be prosecuted for failure to keep proper books, is removed. This was done by section 101 (3) of the 1947 Act and is incorporated in subsection (1) *supra*. Such officers are now liable to prosecution.

A further amendment, the general purpose of which is to extend the liability in those cases from directors to *any* officer of the company concerned who is in default, was introduced by section 105 (1) of the 1947 Act and brought into effect by the Fifth Schedule to that Act.

The section is based on section 158 of the Bankruptcy Act, 1914, as amended by section 7 of the Bankruptcy (Amendment) Act, 1926, as to which, see 2 Halsbury's Laws (2nd edn.), p. 464.

Commencement of winding up.—See sections 229, 280.

Date of incorporation.—See section 15.

Proper books of account.—Cf. section 147. It will be noted that the requirements as to proper books of account, the persons responsible for them, and the penalties imposed for failure to keep them, are not quite the same in this section. The effect of the words "shall be deemed not to have been kept" (subsection (2) *supra*) is to bring in the penalties of subsection (1), *supra*, for failure to keep such books "as are necessary to . . . explain the transactions and financial position . . . in sufficient detail to enable . . . buyers and sellers to be identified", unless, of course, the officer concerned shows that he acted honestly, etc. (*ibid.*).

Financial position of the business.—Presumably, this would mean more than books of account sufficient to enable the company to prepare a balance sheet and profit and loss account in accordance with sections 149 to 152, as the case may be. That is to say, except in the case of an ordinary retail business, where there are dealings in goods, the books must be supplemented by statements of annual stocktakings and of purchases and sales showing details of the buyers and sellers concerned. The accounting arrangements as regards goods, therefore, must be such as to enable anyone conducting an enquiry under the section to satisfy themselves as to their completeness and accuracy, e.g. (i) purchases of goods and the seller's name and address must be recorded and the related invoice should be traceable if required; (ii) sales and other disposals of goods should be readily traced through the records. Sales invoice duplicates should, therefore, be retained and those documents should show the buyer's name and address, and particulars of the goods sold to him.

These accounting arrangements would normally call for records such as, for example, Purchases Day Book, Sales Day Book, Debtors and Creditors Ledger, annual Stocktaking List. (N.B. There is nothing in the Act to suggest that a Stock Account should be kept, although in some cases, this may well be one of the records required, e.g., if it is necessary to trace through the business their use in manufacture for ultimate disposal.)

The need for provisions of the above nature should be considered in relation to the question, e.g., of fraudulent preference (as to which, see sections 320, 321).

Day to day transactions.—Presumably, this would mean in date order of sequence.

Definitions.—"Officer who is in default" (section 440 (2)); "book", "company", "officer" (section 455 (1)).

332. Responsibility of directors for fraudulent trading.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

On the hearing of an application under this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be

necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression " assignee " includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

NOTES

The section combines section 275 (1), (2), (3), (6) of the 1929 Act and section 101 (1), (2) of the 1947 Act. The latter provisions came into force on July 1, 1948. Section 275 (4), (5) of the 1929 Act (which prohibited certain persons in respect of whom subsection (1) of that section applied from the management of a company in certain cases) was repealed by section 123 of the 1947 Act, and the provisions which now relate to those matters are dealt with in section 188, *ante*.

Effect of changes.—The liability imposed on directors by the 1929 Act is extended to " any other person " who is knowingly a party to carrying on a business with intent to defraud creditors, and the penalty is increased to a period not exceeding two years (formerly one year). A fine of £500 has also been added.

Directors' responsibility for company's liabilities.—See also sections 202, 203.

Defraud : fraudulent purpose.—These terms connote actual dishonesty (*Re Patrick and Lyon, Ltd.*, [1933] Ch. 786 ; Digest Supp.).

Intent to defraud creditors.—Such intent may in general be inferred if the company continues to carry on business and incurs debts when to the knowledge of the directors there is no reasonable prospect of those debts being paid (*Re Leitch (William C.) Brothers, Ltd.*, [1932] 2 Ch. 71 ; Digest Supp.).

Application under subsection (1).—For the procedure under the 1929 Act, see Companies (Winding-up) Rules 1929, rules 66 to 69.

Declaration.—The declaration should state a definite amount for which the director is liable (*Re Leitch (William C.) Brothers, Ltd.*, *supra*). The section is a punitive provision and the Court in its discretion need not limit this amount to the debts of creditors proved to have been defrauded (*ibid.*). Moneys recovered under the declaration must be treated as general assets available for all creditors and defrauded creditors are given no preferential rights (*Re Leitch (William C.) Brothers, Ltd.* (No. 2) [1933] Ch. 261 ; Digest Supp.).

Definitions.—" Company ", " the Court " (section 455 (1)) ; " person " (Interpretation Act, 1889, section 19).

333. Power of court to assess damages against delinquent directors, etc.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director,

manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

NOTES

The section reproduces section 276 of the 1929 Act. The section applies whether the winding up is by the Court or voluntary or under supervision (see *Rance's Case* (1870), 6 Ch. App. 104; 10 Digest 1009, 6999); and it may be invoked in the winding up of an unregistered company (*Davies' Case* (1890), 45 Ch.D. 537; 3 Digest 136, 103) or of an industrial and provident society (*Re Ferndale Industrial Co-operative Society*, [1894] 1 Q.B. 828; 10 Digest 901, 6151).

Formation or promotion of company.—See generally 5 Halsbury's Laws (2nd edn.) pp. 103 *et seq.* The Court may make an order under the section upon any person who may have helped to promote or form the company, although not an officer of the company when formed (*Re Sale Hotel and Botanical Gardens, Ltd., Ex parte Hesketh* (1898), 78 L.T. 368, C.A.; 9 Digest 540, 3556).

Interest.—For rates which have been ordered to be paid, see *Re Sharpe, Re Bennett, Masonic and General Life Assurance Co. v. Sharpe*, [1892] 1 Ch. 154, C.A.; 9 Digest 515, 3377 (4 per cent.); *Archer's Case*, [1892] 1 Ch. 322, C.A.; 9 Digest 488, 3201 (5 per cent.). Income tax is not allowed to be deducted (*Re National Bank of Wales, Ltd.*, [1899] 2 Ch. 629, C.A.; 28 Digest 71, 373).

Effect of articles or contract purporting to relieve director, etc. from liability.—See section 205.

Power of Court to grant relief.—See section 448.

Who may apply.—The application under the section may be made by the official receiver, the liquidator, a creditor or a contributory (see subsection (1), *supra*). It has, however, been held that the applicant must have a pecuniary interest in the success of the application, and a fully-paid shareholder was precluded from applying where the company's liabilities, even in the event of the application being successful, would be in excess of the assets (*Cavendish Bentinck v. Fenn* (1887), 12 App. Cas. 652, at pp. 664, 669, H.L.; 10 Digest 902, 6161).

Officers of the company.—As to who have been held officers for the purpose of this section, see the cases cited in 5 Halsbury's Laws (2nd edn.) at pp. 642, 643. *De facto* directors or managers are liable if loss has resulted to the company through their acts of misfeasance (*Coventry and Dixon's Case* (1880), 14 Ch.D. 660, at p. 670, C.A.; 10 Digest 900, 6150). The executors of a deceased officer are not officers for this purpose (*Re British Guardian Life Assurance Co.* (1880), 14 Ch.D. 335; 10 Digest 903, 6166), but the survivors of several directors are liable (*ibid.*).

Misfeasance proceedings.—For the procedure under the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 66 to 69. The section does not create any new liability or right but provides a summary method of enforcing those rights, which would otherwise have to be enforced by the ordinary jurisdiction of the Court (*Cavendish Bentinck v. Fenn, supra*). The jurisdiction of the Court under this provision is discretionary, and it may refuse or limit the relief asked for, notwithstanding that it would have no such power in an ordinary action (*Re Sunlight Incandescent Gas Lamp Co., Ltd.* (1900), 16 T.L.R. 535; 9 Digest 494, 3249). On the dissolution of a company, the remedy by misfeasance proceedings ceases to exist (*Pulsford v. Devenish*, [1903] 2 Ch. 625, at p. 633; 10 Digest 1000, 6943). See generally 5 Halsbury's Laws (2nd edn.) pp. 641, *et seq.*

Final judgment within meaning of Bankruptcy Act, 1914.—See generally 2 Halsbury's Laws (2nd edn.) p. 32.

Definitions.—"Contributory" (section 213); "official receiver" (section 233); "company", "the Court", "officer" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

334. Prosecution of delinquent officers and members of company.—(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or

any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate, and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.

(3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(5) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by the last foregoing subsection, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

NOTES

The section combines section 277 of the 1929 Act and section 101 (4) of the 1947 Act, and incorporates a minor drafting amendment in subsections (2) and (4) effected

by section 122 and the Seventh Schedule to the 1947 Act, as to the persons liable thereunder. Subsections (4) and (8) of section 277 of the 1929 Act were repealed by section 101 (4) and the Ninth Schedule to the 1947 Act. The provisions of the 1947 Act here mentioned, so far as they affect the present section, came into force on July 1, 1948.

Effect of changes.—The institution by the liquidator of prosecutions under this section (except in so far as they have been ordered or instituted in particular cases before the coming into force of the section) will no longer be undertaken. If the Director of Public Prosecutions or the Lord Advocate, as the case may be, forms the opinion that a prosecution under the section ought to be instituted, he will institute the prosecution. Section 277 (4) of the 1929 Act, which required the Director to decide whether a prosecution ought to be conducted by him and to inform the liquidator if he formed the opinion that the case was not one in which proceedings ought to be taken by him is repealed, as is the provision in that subsection and in *ibid.*, subsection (1) which empowered the liquidator, with the sanction of the Court, to undertake such prosecution. *Ibid.*, subsection (8), which made provision for the costs and expenses of the liquidator in proceedings so brought by him, is consequentially also repealed. The provision of *ibid.*, subsection (6) (with which subsection (5), *supra*, corresponds) which required the Director to decide, before instituting proceedings, whether it was desirable in the public interest that the prosecution should be conducted by him was also repealed by the Ninth Schedule to the 1947 Act, and is not here reproduced.

Institution of prosecutions.—As to the principles to which the Court had regard in deciding whether or not to direct a prosecution under the corresponding provision of previous Acts, see *Re London and Globe Finance Corporation, Ltd.*, [1903] 1 Ch. 728; 10 Digest 985, 6819).

Investigation by Board of Trade.—As to the Board's powers of investigation, see sections 164 to 175, 250, and (under the 1929 Act) Companies (Winding-up) Rules, 1929, rule 213.

Definitions.—"Member" (section 26); "voluntary winding up" (section 283 (4)); "agent", "company", "officer", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

Supplementary Provisions as to Winding up

335. Disqualification for appointment as liquidator.—A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and—

- (a) any appointment made in contravention of this provision shall be void; and
- (b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding one hundred pounds.

NOTES

The section corresponds with section 278 of the 1929 Act. Subsection (3) of that section was repealed by section 122 and the Ninth Schedule to the 1947 Act, which, as far as it affects this section, came into force on July 1, 1948, but the exclusion by that subsection of a Scottish firm from the definition of "body corporate" is continued by section 455 (3), *post*.

Appointment of liquidator.—See sections 234, 237, 239, 285, 294, 297, 304.

Winding up.—Section 222 (winding up by the Court); section 278 (voluntary winding up); section 311 (winding up under the supervision of the Court).

Definitions.—"Company", "the Court" (section 455 (1)); "body corporate" (section 455 (3)).

336. Corrupt inducement affecting appointment as liquidator.—Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine not exceeding one hundred pounds.

NOTES

The section reproduces section 101 (5) of the 1947 Act, which came into force on July 1, 1948.

General note.—The section should be read with sections 331, 332. The section lays it down that it is an offence to pay or offer any inducement to any creditor or shareholder to vote for the nomination of a particular liquidator.

Appointment of liquidator.—See sections 234, 237, 238, 239, 242, 285, 286, 294, 304.

Definitions.—"Member" (section 213); "company" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

337. Enforcement of duty of liquidator to make returns, etc.—

(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

NOTES

The section reproduces section 279 of the 1929 Act.

Liquidator's returns.—For the rules under the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 173 to 177 and for the forms under the Act, see *ibid.*, Forms Nos. 88, 89. As to returns of accounts by the liquidator in a winding up by the Court, see sections 249, 251. After the final meetings in a voluntary winding up, the liquidator must file returns as required by sections 290 (3), or 300 (3). If the liquidation lasts more than one year, information in the prescribed form must be filed with the Registrar under section 342.

Penalties for default.—See sections 290 (3), 300 (3).

Definitions.—"Contributory" (section 213); "company", "registrar of companies", "the Court" (section 455 (1)).

338. Notification that a company is in liquidation.—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of twenty pounds.

NOTES

The section reproduces section 280 of the 1929 Act, except for some minor amendments to subsection (2) affected by sections 105 (4), 122 (4) and the Seventh Schedule 1 (a) to the 1947 Act, as regards the persons liable thereunder and the conditions in which that liability arises. The provisions of the 1947 Act here mentioned, so far as they affect this section, come into force on July 1, 1948.

Effect of changes.—Section 280 (2) of the 1929 Act imposed an absolute liability on every officer, etc., in default under the section. The stringency of these penal provisions is ameliorated to some extent by the provision of the present section that an officer, liquidator, receiver or manager is not to be penalised except for a contravention or default which he knowingly and wilfully authorised or permitted. The term "officer" now has the meaning given in section 455 (1).

Company being wound up.—See sections 222, 278, 311.

Receiver or manager.—See section 263, sections 346 *et seq.* For analogous provisions where a receiver or manager is appointed, see section 370.

Company's name in its letters, etc.—See section 108 (1) (c).

Definitions.—"Company", "the Court", "officer" (section 455 (1)).

339. Exemption of certain documents from stamp duty on winding up of companies.—(1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company,—

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In the case of such a winding up as aforesaid of a company registered in Scotland—

- (a) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and
- (b) every power of attorney, commission, factory, oath, affidavit, articles of roup or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and
- (c) every deed or writing forming a part of the proceedings in the winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(3) In subsection (1) of this section the expression "assurance" includes deed, conveyance, assignment and surrender, and in subsection (2) of this section the expression "conveyance" includes assignation, instrument, discharge, writing and deed.

NOTES

The section reproduces section 281 of the 1929 Act.

The section embodies a corresponding provision of section 144 of the Bankruptcy Act, 1883 (now section 148 of the Bankruptcy Act, 1914), which was applied to the winding up of companies by the Finance Act, 1895, section 16.

Winding up by the Court.—See section 222.

Creditors' voluntary winding up.—See sections 283 (4), 292 to 300.

Definitions.—"Creditors' voluntary winding up" (section 283 (4)); "company", "the Court" (section 455 (1)); "writing" (Interpretation Act, 1889, section 20).

340. Books of company to be evidence.—Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

NOTES

The section reproduces section 282 of the 1929 Act.

Prima facie evidence.—A contributory may adduce evidence to show that the books are incorrect (*Arnold's Case* (1887), 36 Ch.D. 702, C.A.; 9 Digest 273, 1675).

Entries in the minute book may be sufficient admission of the liability of the company to pay a claim (*Re Teignmouth and General Mutual Shipping Association, Martin's Claim* [1872], L.R. 14 Eq. 148; 10 Digest 1088, 7612). As to the register of members as evidence, see section 118.

Company being wound up.—See sections 211, 278.

Definitions.—"Contributory" (section 213); "book and paper", "company" (section 455 (1)).

341. Disposal of books and papers of company.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:—

- (a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;
- (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board and to appeal to the court from any direction which may be given by the Board in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

NOTES

The section reproduces section 283 of the 1929 Act.

Books to be kept.—In the case of a compulsory or supervision order, see section 247. In a members' voluntary winding up, no specific requirements are mentioned in the Act (but see section 331 as to a company's liability for not keeping proper books). In a creditors' voluntary winding up, under the 1929 Winding-up Rules, the liquidator had to keep such books as might be required by the committee of inspection or creditors (rule 170 (3)). Special provision was made for a liquidator carrying on business (*ibid.*, rule 174). It is unlikely that there will be any substantial changes in these rules.

Audit of liquidator's accounts.—This is not specifically provided for in a voluntary winding up, but under the 1929 Winding-up Rules, the Board of Trade could require the liquidator to furnish verified accounts (rule 198). In the case of a winding up by the Court, see *ibid.*, rules 170, 172. These rules are likely to remain substantially the same.

Inspection of books.—In a voluntary winding up presumably by application under section 307, *ante*. In the case of a compulsory order, see section 266.

Disposal of books.—Under the 1929 Winding-up Rules the Board of Trade had power, on the application of the liquidator or official receiver, to direct the disposal of books (rule 178 (2)) (Cf. *ibid.*, rule 203). It is unlikely that there will be any substantial changes to these rules. At any time before documents have been disposed of, a liquidator may be ordered to produce them, if in his custody, though the company may have been dissolved (*London and Yorkshire Bank v. Cooper* (1885), 15 Q.B.D. 473, C.A.; 10 Digest 984, 6808).

Dissolution of company.—See sections 274 (compulsory order), 290 (members' voluntary winding up), 300 (creditors' voluntary winding up). See also generally sections 352, 353 (other provisions as to dissolution).

Committee of inspection.—See sections 253, 295.

Liquidator.—See sections 239, 285, 294.

Other related provisions.—Section 251 (release of liquidator in the case of a compulsory order), section 354 (surplus assets on dissolution).

Definitions.—"Extraordinary resolution" (section 141), "contributory" (section 213); "creditors' voluntary winding up", "members' voluntary winding up" (section 283 (4)); "company", "book and paper", "general rules" (section 455 (1)).

342. Information as to pending liquidations.—(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

NOTES

The section corresponds with section 284 of the 1929 Act, as amended by section 97 (6) and the Ninth Schedule of the 1947 Act, which came into force, so far as this section is concerned, on July 1, 1948.

General note.—The section applies to all types of liquidations, that is, whether compulsory, voluntary, or subject to supervision.

Effect of changes : Inspection of liquidator's statement.—Section 284 (2) of the 1929 Act gave the right to any person stating himself in writing to be a creditor or contributory of the company, by himself or his agent, at all reasonable times and on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or an extract therefrom. *Ibid.*, subsection (3) also provided that any person untruthfully stating himself to be a creditor or contributory for this purpose should be guilty of a contempt of Court and was punishable accordingly. Section 97 (6) of the 1947 Act applied the provisions of section 314 (1) of the 1929 Act (now section 426 (1), *post*), which gives a general right of inspection and right to receive copies, to this section and repealed *ibid.*, subsection (2). This provision of *ibid.*, subsection (3) above referred to was also accordingly repealed by the Ninth Schedule to the 1947 Act. The present section now reproduces section 284 of the 1929 Act as so amended.

Liquidation not concluded within one year.—The information required to be filed by the liquidator in this case is provided for (under the 1929 Act) by Companies (Winding-up) Rules, 1929, rules 193 to 195. The prescribed intervals of time and prescribed particulars are also there given.

Duty of liquidator to make returns.—See section 337.

Inspection of books by creditors and contributories.—See section 266.

Conclusion of winding up.—See sections 274, 290, 300.

Definitions.—"Company", "prescribed", "registrar of companies" (section 455 (1)).

343. Unclaimed assets in England to be paid to Companies Liquidation Account.—(1) If, where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one

undred and fifty-three of the Bankruptcy Act, 1914, for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid into the bank of England in pursuance of this section may apply to the Board of Trade for payment thereof, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High court.

NOTES

The section reproduces section 285 of the 1929 Act except for an amendment in subsection (1) effected by section 98 of the 1947 Act as regards moneys under the control of the liquidator. The last-mentioned provision came into force on July 1, 1948.

Effect of changes.—The expression “ money representing unclaimed or undistributed assets ” (under the 1929 Act) now includes any money held by a company in trust in respect of dividends or any other sums due to a member of the company.

The section supplements section 248.

Undistributed assets.—Assets in the hands of a liquidator which are to be applied in a scheme under section 206, are not “ undistributed assets ” within the meaning of the present section (*Re Land Mortgage Bank of Florida*, [1898] 1 Ch. 444; 10 Digest 31, 5987).

Company being wound up.—See sections 211, 278. The provisions of the section apply to *all* companies which are being wound up.

Companies Liquidation Account.—See section 360.

Enforcing an account (subsection (2))—For the rules under the 1929 Act, see the Winding-up Rules, rules 198, 199. It is not likely that there will be any substantial change to these rules.

Application for payment out by person entitled.—See the Winding-up Rules, 1929, rule 200, which is likely to remain substantially the same.

Other related rules under the Winding-up Rules, 1929.—See rules 196, 201. It is unlikely these rules will be substantially altered.

Definitions.—“ Liquidator ” (section 239); “ company ”, “ registrar of companies ” (section 455 (1)).

344. Unclaimed dividends, etc., in Scotland to be lodged in bank.—When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of section one hundred and fifty-three of the Bankruptcy (Scotland) Act, 1913, so far as consistent with this Act, shall, with any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

NOTES

The section reproduces section 286 of the 1929 Act.

Dissolution of company.—See sections 274, 290, 300.

345. Resolutions passed at adjourned meetings of creditors and contributories.—Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

NOTES

The section corresponds with section 287 of the 1929 Act.

Resolutions at adjourned meeting.—Cf. section 144 and see the notes to that section.

Meeting of creditors and contributories.—See sections 239, 246, 252, 290, 293, 295, 299, 300 and 346.

Definitions.—Resolutions generally (section 141); “contributory” (section 213); “company” (section 455 (1)).

Supplementary Powers of Court

346. Meetings to ascertain wishes of creditors or contributories.—(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

NOTES

The section reproduces section 288 of the 1929 Act.

Winding up of a company.—See sections 222, 278, 311.

Meetings of creditors and contributories.—The Court has no power to direct a meeting if it cannot make a winding-up order (*Re Joint Stock Coal Co.* (1869), L.R. 8 Eq. 146; 10 Digest 826, 5382, but cf. *Re City and County Bank* (1875), 10 Ch. App. 470; 10 Digest 845, 5564; *Re Langham Skaling Rink Co.* (1877), 5 Ch.D. 669, C.A.; 10 Digest 845, 5562). See also section 222 for other circumstances in which the Court may order a winding up in response to the shareholders' wishes. See also sections 310, 311. Where the wishes of the majority appear from the evidence a meeting of creditors is not required (see *Re West Hartlepool Ironworks Co.* (1875), 10 Ch. App. 618; 10 Digest 1041, 7249). Where the company is insolvent, the wishes of the creditors only are regarded (*Re Lonsdale Vale Ironstone Co.* (1868), 16 W.R. 601; 10 Digest 841, 5516). Under the 1929 Act, see Companies (Winding-up) Rules, 1929, rule 126, which applies *ibid.*, rules 127 to 143 to meetings called under this section.

Voting.—(i) *By contributories.* See section 134 (c), First Schedule, Table A, Part I, articles 62–74. (ii) *By creditors.* See also Companies (Winding-up) Rules, 1929, rules 137 to 139.

Definitions.—“Contributory” (section 213); “articles”, “company”, “the Court” (section 455 (1)).

347. Judicial notice of signature of officers.—In all proceedings under this Part of this Act, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court or of a county court in England, or of the Court of Session or of a sheriff court in Scotland, or of the High Court in Northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

NOTES

The section reproduces section 289 of the 1929 Act.

Enforcement of winding-up orders throughout United Kingdom.—See section 276.

348. Special commission for receiving evidence.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner although he is out of the jurisdiction of the court that made the winding up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

NOTE

The section reproduces section 290 of the 1929 Act.

349. Court may order examination of persons in Scotland.—

(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory.

(2) The order or commission to take the examination aforesaid shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(4) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

NOTES

The section reproduces section 291 of the 1929 Act.

Haver.—This word is defined in Murray's New English Dictionary as "one who has possession of a deed or writing which is called for by a Court of Justice."

350. Costs of application for leave to proceed against company being wound up in Scotland.—(1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

NOTE

The section reproduces section 292 of the 1929 Act.

351. Affidavits, etc., in United Kingdom and dominions.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the United Kingdom, or elsewhere within the dominions of His Majesty, before any court, judge or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

(3) Subsection (2) of section six of the Foreign Service Act, 1943 (which empowers His Majesty by Order in Council to make such amendments of any enactment as appear to him to be consequential on the establishment or reorganisation of His foreign service, including, in particular, such amendments of any reference to an office, rank or grade as appear to Him to be consequential on the abolition or alteration of the description thereof or on the creation of any new office, rank or grade corresponding thereto) shall have effect as if the reference to any enactment included a reference to this section.

NOTES

The section reproduces section 293 of the 1929 Act, except for subsection (3), which is new. That subsection is a purely drafting amendment introduced as a result of the reorganisation of the Foreign Office and diplomatic and consular service, which have been amalgamated into one service, called H.M. foreign service (Foreign Service Order, 1943). Machinery was there provided for regrading and renaming appointments, and section 6 (2) of the Foreign Service Act, 1943, made provision for consequential amendments to enactments relating to appointments under the service. In view of the fact that consuls and vice-consuls are here referred to (subsections (1), (2), *supra*), it is made clear that among the enactments referred to in the 1943 Act is included this section.

Affidavits.—See also R.S.C., Order 38, rule 6.

Provisions as to Dissolution

352. Power of court to declare dissolution of company void.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being

made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

NOTES

The section reproduces section 294 of the 1929 Act.

Company dissolved.—See sections 274, 290, 300.

Two years of date of dissolution.—The time limit is the two years between the date of dissolution and the date of application (*Re Scad, Ltd.*, [1941] Ch. 386; [1941] 2 All E.R. 466; 2nd Digest Supp.).

Application for dissolution.—Presumably, the application for dissolution may be made by petition or motion. For the rules under the 1929 Act, see Companies (Winding-up) Rules, 1929, rules 5, 6, 8. Notice must be served on the Treasury Solicitor in order to ascertain whether the Attorney-General wishes to intervene, and proof of such service is required before an order is made (*Re Home and Colonial Insurance Co. Ltd.* (1928), 44 T.L.R. 718; Digest Supp.). For form of order, see *Re Dixon (C. W.) Ltd.*, [1947] Ch. 251; [1947] 1 All E.R. 279. No order for re-vesting is necessary (*ibid.*).

Person interested.—Persons having unsatisfied claims against the dissolved company are entitled to apply (*Re Spottiswoode, Dixon and Hunting, Ltd.*, [1912] 1 Ch. 410; 10 Digest 1034, 7174). See also *Re Henderson's Nigel Co., Ltd.* (1911), 105 L.T. 370; 10 Digest 1034, 7176 (application on grounds that there are undistributed assets which may be *bona vacantia* (as to which, see section 354)). The validity of proceedings taken during the interval between the dissolution and avoidance are not affected (*Morris v. Harris*, [1927] A.C. 252, H.L.; Digest Supp.). The Court has no power to declare the dissolution void for a limited purpose (*Re Champdany Jute Co., Ltd.*, [1924] S.C. 209; Digest Supp.). Where a company is revived after dissolution, its rights prior to dissolution are not affected (*Colchester Corporation v. Seaber* (1766), 3 Burr. 1866; 13 Digest 435, 1585; *Re Higginson and Dean, Ex parte A.-G.*, [1899] 1 Q.B. 325, at p. 331; 4 Digest 340, 3200).

Definitions.—"Company", "registrar of companies", "the Court" (section 455 (1)).

353. Registrar may strike defunct company off register.—(1)

Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive

months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last foregoing subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved :

Provided that—

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved ; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off ; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

NOTES

The section reproduces section 295 of the 1929 Act, except for a minor drafting amendment to subsection (7) as to persons to whom notice should be sent, effected by section 122 (4) and the Seventh Schedule to the 1947 Act, which came into force, so far as this section is concerned, on July 1, 1948. The effect of the section remains unchanged.

Dissolution of company.—See sections 274, 290, 300. It will, however, be noted that under section 352 the Court, in certain conditions, has power to declare a dissolution void or defer the date thereof.

Carrying on business or in operation.—A company may be in operation, although not carrying on business (*Re Financial Corporation, Ltd.* (1883), 27 Sol. Jo. 199 ; 10 Digest 1063, 7442).

Restoring company's name (subsections (5), (6)) : An "aggrieved" creditor, but for these provisions, would be in difficulties as to proceedings against a company which was not in existence. Hence, subsection (5), *supra*, provides for a winding up by the Court of a company whose name has been struck off the register, that is to say, the company's name need not be first restored for that purpose. An option is also given to a creditor (or a member) under subsection (6), *supra*, to have the company's name restored for the purposes of petitioning for a winding up. See also *Re Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100 ; 10 Digest 1063, 7439 (decided before the present provision was in operation). The Court will usually make an order for restoration if there is any business or property to be dealt with, but on terms that all proper returns are to be made (*Re Johannesburg Mining and General Syndicate, Ltd.* (1901), 45 Sol. Jo. 343 ; 10 Digest 1064, 7451). The power may be exercised where the company, at the time when it was struck off, was in voluntary

liquidation and was carrying on business only for the purposes of the winding up (*Re Outlay Assurance Society* (1887), 34 Ch. D. 479; 10 Digest 1063, 7447). The application is by petition, R.S.C. Order 53B, r. 5 (i), S.I. 1948 No. 1756.

Terms on which order will be made.—See *Re Johannesburg Mining and General Syndicate, Ltd. supra*. The Court has no power to impose a penalty as a condition of making the order (*Re Brown Bayley's Steel Works, Ltd.* (1905), 21 T.L.R. 374; 10 Digest 1062, 7438). The application is usually made to the winding up Judge (*Re Johannesburg Mining and General Syndicate, Ltd. supra*), but the order can be made by any Judge of the Chancery Division (*Re City Lands Investment Corporation, Ltd.*, [1897] W.N. 162; 10 Digest 1064, 7453). The application is by petition under R.S.C., Order 53 B, rule 5 (h), which should be served on the Registrar (*Re Hall (Conrad) & Co., Ltd.* (1916), 60 Sol. Jo. 666; 10 Digest 1063, 7445) and on the Treasury Solicitor (*Re Home and Colonial Insurance Co., Ltd.* (1928), 44 T.L.R. 718; Digest Supp.); and see Practice Note, [1931] W.N. 199; Digest Supp. If the petition is by a member, the company should be joined as co-petitioner (*Re Wright (Walker), Ltd.*, [1923] W.N. 128; 10 Digest 1064, 7452). If the company is in liquidation, the liquidator must petition in the name of the company or join it as petitioner (*Re Johannesburg Mining and General Syndicate, Ltd. supra*) and a company petitioning after dissolution should make an officer co-petitioner (*Re Hall (Conrad) & Co., Ltd. supra*).

Name of company.—See generally sections 17 to 19.

Registered office.—See section 107.

Definitions.—"Member" (section 26); "company", "director", "the Gazette", "officer", "the Court" (section 55 (1)); "person" (Interpretation Act, 1889, section 19).

354. Property of dissolved company to be bona vacantia.—

Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections, be deemed to be bona vacantia and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

NOTES

The section reproduces section 296 of the 1929 Act.

Company dissolved.—See sections 274, 290, 300. The effect of dissolution appears to be that the company ceases to exist and any undistributed assets are not, by virtue of the present section, the property of the company, but vests in the Crown or the Duchies of Lancaster or Cornwall as *bona vacantia*. As to the powers of the Crown to disclaim property so vesting, see section 355. As to the position where the dissolution is declared to have been void under section 352, see *Re Dixon (C. W.), Ltd.*, [1947] Ch. 251; [1947] 1 All E.R. 279.

Definitions.—"Company" (section 455 (1)).

355. Power of Crown to disclaim title to property vesting under foregoing section.—(1) Where any property vests in the Crown under the last preceding section, the Crown's title thereto under that section may be disclaimed by a notice signed by the Treasury Solicitor.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Crown under the last preceding section, and subsections (2) and (6) of section three hundred and twenty-three of this Act and section three hundred and twenty-four thereof shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section three hundred and twenty-three immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Treasury Solicitor, or, if an

application in writing is made to the Treasury Solicitor, by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Treasury Solicitor on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the Gazette and sent to any persons who have given the Treasury Solicitor notice that they claim to be interested in the property.

(7) This section shall apply to property vested in the Crown as aforesaid at the commencement of this Act, and where the vesting came to the notice of the Treasury Solicitor more than six months before the commencement of this Act notice of disclaimer under this section may (except where an application is made to him under subsection (4) of this section) be executed at any time within six months thereafter.

(8) This section shall apply to property vested in the Duchy of Lancaster or the Duke of Cornwall under the last preceding section as if for references to the Crown and to the Treasury Solicitor there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to the Duchy of Lancaster or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

(9) This section shall apply to property in Scotland as if for references to the Treasury Solicitor there were substituted references to the King's and Lord Treasurer's Remembrancer, and as if section three hundred and twenty-three of this Act applied in the case of a winding up in Scotland, with the substitution, however, for references to property of a leasehold nature, to an under-lessee, and to a mortgagee by demise or a chargee by way of legal mortgage, of references respectively to property held under a lease, to a sub-lessee, and to the creditor in a security constituted by the assignation of a lease recorded under the Registration of Leases (Scotland) Act, 1857.

NOTES

The section substantially reproduces section 100 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is to confer power on the Treasury Solicitor to disclaim any property vested in the Crown as *bona vacantia* on a dissolution. The procedure is analogous to section 323, some of the provisions of which are imported into this section. For the disclaimer to be effective it must be made in the manner provided by the section, namely, the notice must be signed by the Treasury Solicitor, etc. (subsection (1) or (8) or (9) (where applicable)); it must be executed within 12 months or such other period as provided for (subsection (4)); vesting date, if known, must be stated (subsection (5)); the notice must be filed and advertised (subsection (6)). It will be noted, that the section will apply to property of a company being wound up in Scotland (see subsection (9), *supra*), with some modifications, although section 323 does not in general apply to Scotland. The right to disclaim may be waived in certain conditions (subsection (3)). The section is retrospective, but special provision is made in certain cases as regards property vested under section 354 before July 1, 1948 (subsection (7)).

Effect of disclaimer.—See subsection (2), *supra*. This is subject to and without prejudice to an antecedent Court order under sections 352, 353.

Disclaimer under sections 323 (2), (6); 324.—Any property disclaimed under this section will now be dealt with in accordance with section 323 (2), (6), and in certain cases the Crown may escape liability for any rentcharge attached thereto (see sections 324, 356).

Property vesting in the Crown.—The section is retrospective to a limited extent only (see subsection (7), *supra*). The principle is that disclaimer must be made

within 12 months after knowledge of the vesting order, but the 12 months begin to run from January 1, 1948, and no earlier.

Disclaimer of property in Scottish winding up.—Where disclaimer under this section has taken place, it will be dealt with as though section 323 (2), (6), applied to Scotland.

Definitions.—"Company", "registrar of companies", "the Court", "the Gazette" (section 455 (1); "person" (Interpretation Act, 1889, section 19).

356. Liability for rentcharge on company's land after dissolution.—(1) Section three hundred and twenty-four of this Act shall apply to land in England which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under section three hundred and twenty-three of this Act.

(2) In this section the expression "company" includes any body corporate.

NOTE

The section corresponds with section 99 of the 1947 Act, which came into force on July 1, 1948. Cf section 324, *ante*, and see the notes thereto.

Special Provisions as to Stannaries

357. Attachment of debt due to contributory on winding up in stannaries court.—When several companies are in course of liquidation by or under the supervision of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counter-claim or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

NOTES

The section reproduces section 297 of the 1929 Act.

Court exercising stannaries jurisdiction.—See section 218 (4).

Liquidation by or under supervision.—See sections 222, 311.

Definitions.—"Contributory" (section 213), "company", "company within the stannaries" (section 455 (1); "person" (Interpretation Act, 1889, section 19).

358. Preferential payments in stannaries cases.—(1) In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

- (a) in the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall not extend to the principal agent, manager, purser or secretary;
- (b) all wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to four months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts;
- (c) the following debts, that is to say:—
 - (i) wages of any miner, artizan or labourer and accrued

holiday remuneration becoming payable to or in right of any miner, artisan or labourer as mentioned in paragraph (d) of subsection (1) of section three hundred and nineteen of this Act, being wages or remuneration unpaid at the commencement of the winding up ;

(ii) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (e) of the said subsection (1) as are given priority by that paragraph ; and

(iii) all such amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (f) of the said subsection (1) ;

shall be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary or accrued holiday remuneration due to them ;

(d) subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the debts to be paid in priority under the last foregoing paragraph, together with interest thereon at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof, and as soon as the said sum has been so advanced, the said debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs ;

(e) the provision giving a right of priority to a person who has advanced money for the making of payments on account of wages, salary or accrued holiday remuneration shall have effect subject to the modifications contained in this section.

(2) References in the foregoing subsection to wages shall be construed as including references to such remuneration in respect of a period of holiday or absence from work as is deemed for the purposes of section three hundred and nineteen of this Act to be wages, and for the purposes of that subsection the expression " accrued holiday remuneration " has the same meaning as it has for the purposes of that section.

(3) The foregoing provisions of this section shall not apply in the case of such a winding up as is mentioned in subsection (9) of the said section three hundred and nineteen, and in such a case the provisions which, by virtue of that subsection, are deemed to remain in force shall have effect in their application to companies within the stannaries subject to the modifications subject to which they would have had effect if this Act had not passed.

NOTES

The section combines section 298 of the 1929 Act (as amended by subsequent enactments) and section 91 (3), (4), (5), (6), (8) of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—The changes are analogous to those in section 319 as regards preferential payments in an ordinary winding up. The effect is that companies in the stannaries are brought into line as regards the period in respect of which remuneration ranks as a preferential debt, which is now four months instead of three months (subsection (1) (b)). " Wages " will now include any holiday remuneration (see also section 319). The section is not retrospective and the preferential payments payable

hereunder will not rank for priority as indicated where the appointment of a receiver or the taking of possession, as the case may be, occurred before July 1, 1948. In those cases, the provisions of the 1929 Act (i.e. before these amendments were made) will apply (subsection (3)).

Claims by execution creditors.—See sections 325, 326.

Mortgages and charges.—As to registration, see section 95.

Definitions.—"Agent", "company", "company within the stannaries", "the Court" (section 455 (1)).

359. Provisions as to mine club funds.—(1) On the winding up of a company within the stannaries, contributions of the miners, artisans or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

NOTES

The section reproduces section 299 of the 1929 Act.

Winding up of company within the stannaries.—As to the Court having such jurisdiction, see section 218 (4).

Right to apply to the Court for directions.—See section 307.

Definition.—"Company within the stannaries" (section 455 (1)).

Central Accounts

360. Companies Liquidation Account.—(1) An account, to be called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

NOTES

The section reproduces section 300 of the 1929 Act. The section requires the liquidator to pay all moneys received by him into the Companies Liquidation Account, and payments thereout to be made in the prescribed manner.

Banking arrangements.—See section 248 (payments into Companies Liquidation Account unless authority is given for some other account to be opened). See also section 343 (unclaimed assets or dividends, etc., to be paid into Companies Liquidation Account). See further, the winding-up rules there mentioned.

Payments in the prescribed manner.—Under the 1929 Act, the Companies (Winding-up) Rules, 1929, rule 167, applied. It is unlikely that that rule will be substantially changed.

361. Investment of surplus funds on general account.—

(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury and shall pay over the whole or any part of that excess, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid into the Bankruptcy and Companies Winding-up (Fees) Account established under the Economy (Miscellaneous Provisions) Act, 1926.

NOTES

The section reproduces section 301 of the 1929 Act.

Powers of committee of inspection as to investment of funds.—Under the Companies (Winding-up) Rules, 1929, the committee of inspection had to certify the cash balance in excess of requirements to the Board of Trade, and the Board at their request would invest (*ibid.*, 171 and Form No. 84). As to sale of securities, see *ibid.* and Form 85. The same rule made provision where there was no committee of inspection acting. It is unlikely that there will be any substantial change to either the rule or forms.

Other related provisions.—Section 343 (unclaimed assets); section 354 (property *bona vacantia*).

Definitions. Companies Liquidation Account (section 360).

362. Separate accounts of particular estates.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury.

(5) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

The section reproduces section 362 of the 1929 Act, except for a minor amendment in subsection (4) thereof as regards the power of the Treasury to vary the interest rates by order, effected by section 120 (3) of the 1947 Act, and subsection (5), which is new and is added in consequence of the coming into operation of the Statutory Instruments Act, 1946. The provision of the 1947 Act here mentioned came into force on December 1, 1947.

Winding up of a company.—See sections 222, 278, 283, 292, 311.

Committee of inspection.—See sections 252, 253, 295.

Realisation of securities.—For the rule under the 1929 Act, see Companies (Winding-up) Rules, 1929, rule 171).

Account kept by Board of Trade.—See section 361.

Power exercisable by statutory instrument.—See section 365 and the Statutory Instruments Act, 1946, sections 5 (2) and 6 (2); 39 Halsbury's Statutes 786, 787. As to copies being laid before Parliament, see *ibid.*, sections 1 (2) and 4 (3); 39 Halsbury's Statutes 784, 786. The Act came into force on January 1, 1948 (see S.I., 1948, Nos. 1, 2).

Definitions.—"Company" (section 455 (1)); "statutory instrument" (Statutory Instruments Act, 1946, section 1; 39 Halsbury's Statutes 784).

Officers

363. Officers and remuneration.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase or diminish that remuneration as they think fit.

NOTES

The section reproduces section 303 of the 1929 Act.

Officers of the Board of Trade.—Such officers include the official receiver (see section 233).

364. Returns by officers in English winding up.—The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times, and in such manner and form, as may be prescribed, and from those returns the Boards shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

NOTES

The section reproduces section 304 of the 1929 Act.

Prescribed manner and forms.—For the prescribed manner and forms under the 1929 Act, see Companies (Winding-up) Rules, 1929, rule 214, and Forms Nos. 101, 102. A return under this section is privileged (*Burr v. Smith*, [1909] 2 K.B. 306, C.A.; 10 Digest 869, 5885).

Rules and Fees

365. General rules and fees for winding up.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

(2) All rules made under this section shall be judicially noticed and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for.

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the Economy (Miscellaneous Provisions) Act, 1926.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge,"

and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers", and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The powers conferred by this section on the Lord Chancellor, the Court of Session and the Treasury shall be exercisable by statutory instrument, and—

- (a) a statutory instrument containing general rules shall be laid before Parliament after being made ;
- (b) the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing general rules made by the Court of Session in like manner as if the rules had been made by a Minister of the Crown.

NOTES

The section reproduces section 305 of the 1929 Act, except for an amendment in subsection (2) and a new subsection (5), occasioned by the coming into operation of the Statutory Instruments Act, 1946.

General rules.—For the rules under the 1929 Act, see Companies (Winding-up) Rules, 1929.

Act of Sederunt. See S.I. 1948 Nos. 2292 and 2293.

Effect as if enacted by this Act.—The rules have statutory effect, and, so long as they remain in force, cannot be questioned by any Court (*Patent Agents Institute v. Lockwood*, [1894] A.C. 347, H.L.; 36 Digest 856, 3434); cf. *Minister of Health v. R., Ex parte Yaffe*, [1931] A.C. 494, H.L.; Digest Supp.

Scale of Fees.—For the scale of fees under the 1929 Act, see Companies (Board of Trade) Fees Order, 1929, and subsequent orders.

Statutory instrument.—See note to section 362.

PART VI

RECEIVERS AND MANAGERS

366. Disqualification of body corporate for appointment as receiver.—A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding one hundred pounds.

NOTES

The section corresponds with section 306 of the 1929 Act. The section is analogous to section 335, *ante*, in the case of a winding up.

General note.—Subject to the provisions of this section and section 367 (disqualification of undischarged bankrupt for appointment as receiver), a receiver may be appointed out of Court by virtue of power contained in an instrument such as a mortgage debenture (see section 369), or by the Court (Supreme Court of Judicature (Consolidation) Act, 1925, section 45, see also section 368, *post*). In either case, the appointment may be for similar purposes.

Property of the company.—All charges on the property must be registered in order to be valid against a liquidator or creditor of the company (see section 95) (see also section 106 (registration, etc. applicable to companies incorporated outside England)).

Other related provisions.—Section 94 (priority of preferential payments); section 102 (notice of appointment to Registrar); section 376 (explanation of terms).

Definitions.—"Company" (section 455 (1)); "body corporate" (section 455 (3)).

367. Disqualification of undischarged bankrupt from acting as receiver or manager.—(1) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

(2) The foregoing subsection shall not apply to a receiver or manager where—

- (a) the appointment under which he acts and the bankruptcy were both before the commencement of this Act ; or
- (b) he acts under an appointment made by order of a court.

NOTES

The section reproduces section 83 of the 1947 Act, which came into force on July 1, 1948. The section is analogous to section 187, *ante*, in the case of an undischarged bankrupt acting as director of a company.

General note.—The restriction imposed is modified to the extent stated in subsection (2) *supra*. Apart from this and section 366, there are no other statutory restrictions. The section applies only to receivers appointed out of Court, since a receiver acting under an appointment made by order of a Court is expressly exempted under subsection (2) (b), *supra*.

Receiver for debenture holders.—See generally sections 369, 372. See also 5 Halsbury's Laws (2nd Edn.), pp. 514 *et seq.*

Commencement of the Act.—See section 462 (2), *post*.

Other related provision.—Section 366 (disqualification of body corporate for appointment as receiver).

Definitions.—"Company", "debenture" (section 455 (1)).

368. Power in England to appoint official receiver as receiver for debenture holders or creditors.—Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

NOTES

The section reproduces section 307 of the 1929 Act.

Application to the Court.—See *British Linen Co. v. South American and Mexican Co.*, [1894] 1 Ch. 108, C.A. ; 10 Digest 795, 5012. The debenture holders cannot insist on their own nominee, but the Court will not as a rule displace a receiver appointed by the debenture holders under their special powers, nor will the Court of Appeal interfere except in special circumstances (*Re Stubbs (Joshua), Ltd., Barney v. Stubbs (Joshua), Ltd.*, [1891] 1 Ch. 475, C.A. ; 10 Digest 794, 5004). A liquidator may be appointed as receiver in respect of some or all of the assets (*Willmott v. London Celluloid Co.* (1885), 52 L.T. 642, C.A. ; 10 Digest 795, 5010), and he may be appointed in place of a receiver appointed by the Court where the assets are of an unusual character (*Perry v. Oriental Hotels Co.* (1870), 5 Ch. App. 420 ; 10 Digest 794, 5005), in which case the official receivers may be appointed receiver of part of them, leaving the original receiver in charge of the other assets (*British Linen Co. v. South American and Mexican Co.*, *supra*). The liquidator cannot obtain the discharge of the receiver unless with a view to his being appointed receiver in his place (*Strong v. Carlyle Press*, [1893] 1 Ch. 268, C.A. ; 10 Digest 803, 5097). The wishes of the parties most interested in the beneficial realisation of the company's assets will decide whether the same person shall act as receiver and liquidator (*Boyle v. Bettws Llantwit Colliery Co.* (1876), 2 Ch.D. 726 ; 10 Digest 799, 5055).

Winding up by Court.—See section 222.

Official receiver.—See section 233.

Receiver for debenture holders.—See generally sections 369, 372.

Other related provision.—Section 102 (notice of appointment).

Definitions.—"Official receiver" (section 233) ; "company", "the Court", "debenture" (section 455 (1)).

369. Receivers and managers appointed out of court.—(1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) A receiver or manager of the property of a company appointed as aforesaid, shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the

performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(3) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act but subsection (2) thereof shall not apply to contracts entered into before the commencement of this Act.

NOTES

The section reproduces section 87 of the 1947 Act, except for subsection (3) thereof which is incorporated in section 371 (2), *post*. The section came into force on July 1, 1948.

The section effects certain minor amendments in the law relating to receivers appointed out of Court as follows: (i) a receiver may apply to Court for guidance (subsection (1)); (ii) he is now under the same personal liability as a receiver appointed by the Court in respect of any contract entered into by him in performance of his functions, except to the extent otherwise provided for in the contract, and he is entitled to an indemnity out of the assets. Special provision is made in the case where he has wider rights of indemnity than those under subsection (2) *supra* (subsection (2)). These provisions do not apply to applications made or contracts entered into before July 1, 1948 (subsection (3)).

Receiver appointed out of Court.—The appointment of a receiver out of Court will depend on the terms of the instrument creating the debt or charge and normally his powers, duties and liabilities are also there defined. The right to appoint a receiver is most commonly exercised by debenture holders or trustees for debenture holders under a debenture trust deed provided express power is there given to appoint one on the happening of certain contingencies, for example, in case of default in payment of principal and interest, or of any breach of the provisions relating to the charge. If the debt is secured by a fixed charge, as in the case of a mortgage, the provisions of sections 101 (1) (iii) and 109 (1) (15 Halsbury's Statutes 284, 291) of the Law of Property Act, 1925, empower the mortgagee to appoint a receiver in certain events and his powers and duties are also there specified. These statutory provisions, however, may be modified or extended either in the mortgage or by separate deed, and his status where appointed by debenture holders will depend upon the terms of the instrument appointing him. The decision in *Owen & Co. v. Cronk*, [1895] 1 Q.B. 265, C.A.; 10 Digest 792, 4974, as applied to a receiver appointed out of Court would, it seems, be no longer applicable in view of subsection (2) *supra*. In that case it was decided that a receiver appointed by the Court is personally liable upon contracts made by him as receiver, subject to his right to be indemnified out of the property subject to the debenture, and, by the present section, a receiver appointed out of Court is now in the same position. He is not the agent of the company, or of the Court, or of anybody else (*ibid.*, and see *Moss Steamship Co., Ltd. v. Whinney*, [1912] A.C. 254; 10 Digest 797, 5033). He may, however, by the terms of the contract, exclude personal liability to a person with whom he contracts (*Re Hawkins (Ernest) & Co., Ltd.*, *Briebe v. Hawkins (Ernest) & Co., Ltd.* (1915), 31 T.L.R. 247; 10 Digest 801, 5077).

Application to Court for directions.—This provision places a receiver appointed out of Court in the same position as a receiver appointed by the Court. He should not apply to the Court unless the circumstances are exceptional (*Parker v. Dunn* (1845), 8 Beav. 497; 39 Digest 64, 742). The application is by summons (R.S.C. Order 53B, r. 8 (q)).

Liability of receiver.—The considerations are different where (i) the receiver merely receives moneys, or (ii) carries on the business of the company. Some of the decisions in this matter may be classified as follows: (a) appointment under an instrument in respect of a floating charge (see *Re Vinbos, Ltd.*, [1900] 1 Ch. 470; 10 Digest 792, 4976); (b) under an instrument in respect of a specific charge (see *Gosling v. Gaskell*, [1897] A.C. 575; 10 Digest 792, 4975); (c) appointment by the Court in respect of a floating charge (see *Burt, Boulton and Hayward v. Bull*, [1895] 1 Q.B. 276, C.A.; 10 Digest 803, 5091). These cases must, however, now be read in the light of the provisions of this section.

Contracts by the receiver.—A receiver appointed under the terms contained in any instrument may apply to the Court for guidance (subsection (1), *supra*), and these provisions will no doubt be of considerable assistance in questions affecting contracts already entered into by the company on his appointment, or if, for any reason, he finds that he is unable to complete such contracts. He may, of course, enter into fresh contracts, and in this respect the new provisions as to personal liability under subsection (2), *supra*, should be noted. As to torts committed by the receiver, see *Re Goldberg (No. 2)*, *Ex parte Page*, [1912] 1 K.B. 606; 10 Digest 793, 4983.

Relations of the receiver with third parties.—*The landlord*—see *Re Roundwood Colliery Co.*, *Lee v. Roundwood Colliery Co.*, [1897] 1 Ch. 373, C.A.; 10 Digest 964, 6616. As regards *execution creditors*, see *Evans v. Rival Granite Quarries, Ltd.*, [1910] 2 K.B. 979, C.A.; 29 Digest 461, 88. As regards *rates and taxes*, see section 319 (5) (b). See also *Richards v. Kidderminster Overseers*, [1896] 2 Ch. 212; 10 Digest 796, 5025.

Other related provisions.—Section 102 (notice of appointment to Registrar); section 372 (debentures giving floating charge); section 376 (explanation of terms).

Commencement of the Act.—See section 462 (2), *post*.

Definitions.—"Receiver or manager of the property of a company", "appointment of receiver or manager under powers contained in an instrument" (section 376); "company", "the Court" (section 455 (1)).

370. Notification that receiver or manager appointed.—(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of twenty pounds.

NOTES

The section reproduces section 308 of the 1929 Act except for a minor amendment in subsection (2) effected by section 105 (4), 122 (4) of, and the Seventh Schedule to the 1947 Act as to persons liable thereunder, and the conditions in which they become so liable. The provisions of the 1947 Act here mentioned so far as they affect this section came into force on July 1, 1948.

Effect of changes.—The provisions of section 308 (2) of the 1929 Act (which penalised default in stating, in invoices, etc., that a receiver or manager had been appointed) were amended by the 1947 Act (section 105 (4)) so as not to penalise an officer, liquidator, receiver, manager, except for a contravention or default which was knowingly or wilfully authorised or permitted by the person concerned. The expression "every director, manager, secretary or other officer" used in the 1929 Act, has here been amended to "any officer" in accordance with section 122 (4) of the 1947 Act (incorporated in section 455 (1) *post*).

The effect of the new provision introduced by section 105 (4) of the 1947 Act is to ameliorate to some extent the stringency of the penal provisions of the 1929 enactments.

Liquidator.—See section 239 (f).

Name of Company.—See section 108.

Knowingly and wilfully.—The effect of these words is to make it clear that a director or other officer or receiver, etc., who unintentionally fails to comply with the section is not liable to the penalty imposed.

Definitions.—"Receiver or manager of the property of a company" (section 376); "company", "document", "officer" (section 455 (1)); "person" (Interpretation Act, 1889, section 19).

371. Power of court to fix remuneration on application of liquidator.—(1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the court under the foregoing subsection shall, where no previous order has been made with respect thereto under that subsection,—

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and
- (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order :

Provided that the power conferred by paragraph (c) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.

(4) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act, and to periods before, as well as to periods after, the commencement of this Act.

NOTES

The section combines section 309 of the 1929 Act and section 87 (3), (4) of the 1947 Act. The latter provisions came into force on July 1, 1948. For the provisions of section 87 (1), (2) of the 1947 Act, see section 369, *ante*.

Effect of changes.—The power of the Court to fix the receiver's remuneration under section 309 of the 1929 Act is now made retrospective to the period before the Order was made or applied for, and is exercisable notwithstanding that the receiver has died or ceased to act. The decision in *Re Greycaine, Ltd.*, [1946] Ch. 269, C.A., is therefore no longer good law. Where the remuneration actually received by the receiver for any period before the making of the Order is in excess of the amount actually fixed by the Order for that period, he or his personal representatives may be made to account for the excess or such part thereof as the Order may specify. This last power, however, is not to be exercised in respect of any period before the application for the Order unless the Court is of opinion that special circumstances exist making it proper for the power to be exercised.

Subsection (4) *supra* (corresponding with section 87 (4) of the 1947 Act) extends the provisions of the section to periods before July 1, 1948, as well as to subsequent periods.

It is not clear how far the Court can interfere under this provision where the remuneration is fixed by the instrument under which the receiver was appointed.

Remuneration of receiver.—A receiver appointed under section 101 of the Law of Property Act (as to which, see section 369, *ante*) is entitled by virtue of section 109 (6) (15 Halsbury's Statutes 292) of that Act to remuneration and expenses as there specified, or such other remuneration as the Court may allow, on application made to it for that purpose. Under the present section, however, a receiver or manager appointed under the powers contained in an instrument may, either on his own application or that of the liquidator, apply to the Court to fix his remuneration.

Commencement of the Act.—See section 462 (2).

Definitions.—"Receiver or manager of the property of a company", "appointment of receiver or manager under the powers contained in an instrument" (section 376); "company", "the Court" (section 455 (1)).

372. Provisions as to information where receiver or manager appointed.—(1) Where, in the case of a company registered in England, a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in the next following section referred to as "the receiver") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this and the next following section—

- (a) the receiver shall forthwith send notice to the company of his appointment ; and
- (b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with the next following section a statement in the prescribed form as to the affairs of the company ; and

(c) the receiver shall within two months after receipt of the said statement send—

(i) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar of companies also a summary of the statement and of his comments (if any) thereon ; and

(ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect ; and

(iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the registrar of companies, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect—

(a) with the omission of the references to the court in subsection (1) ; and

(b) with the substitution for the references to the court in subsection (2) of references to the Board of Trade ;

and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(4) Subsection (1) of this section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to the next following subsection) include references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression " the receiver " where used in, or in relation to, subsection (2) of this section.

(5) This and the next following section, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

NOTES

The section substantially reproduces section 84 of the 1947 Act, which came into force on July 1, 1948.

General note.—This and the next following sections make special provision in cases where a receiver or manager of the whole or substantially the whole of a company's property is appointed on behalf of the debenture holders who are secured by a floating charge. The purpose of the section is to ensure that shareholders and creditors and the debenture holders themselves should have sufficient information about the financial position of the company after the appointment of a receiver. It is therefore provided that a statement of affairs must be submitted as at the date of the appointment of the receiver, similar to that required in the event of a winding up (see section 283, *ante*), a summary of the receipts and payments and payments in the receivership must be submitted at yearly intervals as well as a statement showing the position at the conclusion of the receivership (see also section 373), and these documents must be lodged with the Company or its liquidator and delivered to the Registrar of Companies for registration. Some modification is made in the case of a receiver appointed out of Court.

The section, unlike sections 366 to 371, and 374, 375, which apply equally to Scottish and English companies, applies only to English companies and not to Scottish companies.

Receiver or manager . . . property of company.—For explanation of these terms, see section 376.

Substantially the whole of the property.—The section will not apply if the appointment relates to a specific charge or where the property comprised in the charge is *part* only of the company's assets (unless the remainder is an insubstantial part of the whole) (see in another connection the notes to section 369, "Receiver appointed out of Court").

Debenture holders.—See section 86.

Floating charge.—See sections 95, 319, and in particular 322.

"Subject to this and the next following section".—See subsections (3)–(6) *supra*, and section 373 (4).

Submission of statement by company to receiver.—Normally 14 days is allowed for the company to submit the statement under section 373, but this period may be extended as provided for in subsection 1 (c), *supra*. The intention is that the receiver should receive the statement as soon as possible after his appointment so that he may check the assets at the earliest possible time. A similar provision exists in section 235 (3) in the case of the submission of a statement of affairs in a compulsory winding up.

The receiver (subsection (2)).—This includes *any* receiver or manager, including any of the persons mentioned in subsection (4), *supra*.

Two months or such longer period as the Court may allow (subsection (2)).—The extension may be allowed by the Board of Trade instead of the Court in the case of a receiver appointed out of Court (see subsection (3), *supra*). The "Court" means the Court by which the receiver was appointed (*ibid.*). This subsection corresponds in many respects with section 374 (1). The points of difference are: (1) That the present subsection is limited in its application to, (i) appointments in England and (ii) over the whole or substantially the whole of the company's assets, and (iii) on behalf of holders of debentures secured by a floating charge. (2) Different periods of time apply as to the statements to be submitted by the receiver to the registrar. (3) The time may be extended by the Court (or the Board of Trade) and not by the Registrar. (4) The abstract is to be sent not only to the Registrar, but also to the trustees for the debenture holders and to such debenture holders of whose addresses he is aware. Where a receiver is appointed under an instrument, but otherwise comes within the present section, the subsection applies to such receiver in place of section 374 (see section 374 (1)).

Prescribed forms.—The prescribed form of abstract is Board of Trade Form No. 57 (S.R. & O. 1929, No. 823, Schedule as amended by the Companies (Forms) Order, 1948, S.I. 1948 No. 1518, see Appendix V, *post*).

Receiver and liquidator as same person (subsection (5)).—The Court sometimes appoints the liquidator as receiver in respect of some or all of the assets (see, e.g. *Willmott v. London Celluloid Co.* (1885), 52 L.T. 642, C.A.; 10 Digest 795, 5010) and he may be appointed in place of a receiver appointed by the Court where the assets are of an unusual character (*Perry v. Oriental Hotels Co.* (1870), 5 Ch. App. 420; 10 Digest 794, 5005). The liquidator cannot obtain the discharge of the receiver unless with a view to his being appointed receiver in his place (*Strong v. Carlyle Press*, [1893] 1 Ch. 268, C.A.; 10 Digest 803, 5097).

As to the considerations in deciding whether the same person should act as receiver and liquidator, see *Boyle v. Bellus Llantwit Colliery Co.* (1876), 2 Ch.D. 726; 10 Digest 799, 5055).

Penalty for default.—See also the Fifteenth Schedule.

Other related provision.—Section 102 (notice of appointment to Registrar).

Definitions.—"Company", "debenture", "prescribed", "registrar of companies", "the Court" (section 455 (1)).

373. Special provisions as to statement submitted to receiver.—(1) The statement as to the affairs of a company required by the last foregoing section to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been officers of the company ;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment ;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required ;
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Board of Trade and for references to an affidavit of references to a statutory declaration ; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

NOTES

The section corresponds with section 85 (1) to (5), (8) of the 1947 Act, which came into force on July 1, 1948. As to section 85 (6), (7) of the 1947 Act, see section 426, *post*.

General note.—The section, like the last section, applies only to a receiver appointed over the whole or substantially the whole of the property of a company registered in England on behalf of the holders of debentures secured by a floating charge. The statement of affairs required by section 372 to be submitted to the receiver or his successor (as to which, see subsection (6), *supra*) must show the particulars set out in subsection (1), *supra*. Normally, it must be submitted by at least one director and the secretary, and must be verified by an affidavit sworn by the persons submitting it (or, in the case of a receiver appointed out of Court, by a statutory declaration (see subsection (4), *supra*)), but the Court (or, in the case of a receiver appointed out of Court, the Board of Trade) may direct delivery and verification by any of the persons set out in subsection (2). Provision is made by subsection (3) for the payment of the costs and expenses of the persons making the statement and affidavit (or statutory declaration) required by this section and a penalty is imposed for default in complying with the requirements of the section without reasonable excuse.

Statement of affairs.—The form of statement (subject to appropriate modifications) is analogous to the form prescribed by the Board of Trade under section 235 in the case of a winding up by the Court.

Successor.—See section 372 (4) and subsection (6), *supra*.

Receiver's appointment.—See section 102 (notice of appointment to the Registrar of Companies). In a case to which this section applies, see section 372 (1) (a) and (b).

Verified by affidavit.—In the case of a receiver appointed out of Court (as to which, see section 369), the statement is to be verified by a statutory declaration (see subsection (4), *supra*).

Person taking part in the formation.—In its literal interpretation this provision would not include a person *interested* in the formation unless such person's interest amounted to having taken part in it, for example, by taking the necessary steps to bring it into existence. This must obviously be a question of fact. It is also important to note the date provisions, since any person who had taken part in the formation more than a year before the date of the receiver's appointment will not be liable to render a statement under the section unless he was an officer of the company.

Appeal to the Court (subsection (3)).—I.e., the Court by which the receiver was appointed (see subsection (4)).

Receiver appointed under an instrument (subsection (4)).—See section 376 (b).

Other related provisions.—Section 426 (1) (ii) (inspection of documents kept by the Registrar).

Definitions.—"Company", "director", "officer", "the Court" (section 455 (1)), "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

374. Delivery to registrar of accounts of receivers and managers.—(1) Except where subsection (2) of section three hundred and seventy-two of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

NOTES

The section combines section 310 of the 1929 Act and section 84 (6) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of change.—The section makes provision for the rendering of accounts by a receiver or manager in ordinary cases. Sections 372 and 373 make special provision in the case of a receiver or manager appointed in England of the whole or substantially the whole of a company's property on behalf of the holders of debentures secured by a floating charge. As section 372 (2), provides for the rendering of accounts by the receiver in such cases, they are excluded from the general operation of this section.

The effect of the section is that in cases other than those dealt with by sections 372, 373, periodic accounts must be rendered by the receiver to the Registrar of Companies. The provisions are similar in form to those of section 372 (2), but with the following distinctions: (i) they apply in the case of all companies, whether in England or in Scotland; (ii) they are not limited to appointments over the whole or substantially the whole of the company's property, nor need the debenture holders on whose behalf they are appointed be secured by a floating charge; (iii) for the references in section 372 (2) to "two months" and "twelve months", the periods of "one month" and "six months" are substituted; (iv) the time may be extended by the Registrar; (v) the abstract is to be sent only to the Registrar. The section applies only to a receiver appointed under an instrument.

Receiver appointed under powers contained in an instrument.—See section 376 (b).

Receiver ceasing to act.—See section 102 (2).

Prescribed form.—For the form prescribed, see Board of Trade Form No. 57 (S.R. & O. 1929 No. 823, Schedule, Appendix V, *post*).

Other related provisions.—Section 375 (duty to make returns).

Definitions.—"Receiver or manager of the property of a company" (section 376); "company", "prescribed", "registrar of companies" (section 455 (1)).

375. Enforcement of duty of receivers and managers to make returns, etc.—(1) If any receiver or manager of the property of a company—

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
- (b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him;

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of the foregoing subsection, an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and in the case of any such default as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1) of this section.

NOTES

The section combines section 311 of the 1929 Act, and section 86 of the 1947 Act. The latter section came into force on July 1, 1948.

Effect of changes.—(i) The provisions of the 1929 Act as regards the Court's power to make an order to compel a receiver to render accounts to a liquidator are now extended to include managers of the property (subsection (1)). (ii) Power is given to the Court to order that the costs of an application to enforce the rendering of accounts to a liquidator be borne by a receiver or manager (subsection (2)). (iii) The provisions of subsection (3) as to penal enactments, are now applied in relation to any default on the receiver's or manager's part to render accounts to the liquidator under subsection 1 (b) as well under *ibid.*, 1 (a). (iv) A receiver or manager is now required to vouch the accounts rendered to a liquidator (subsection 1 (b)).

Receiver or manager.—See generally, sections 369, 372.

Receiver's accounts.—See sections 372, 374. See also Board of Trade Form No. 57.

Giving notice.—See section 102.

Appointed under powers contained in an instrument.—See section 376.

Application to Court.—The application is by way of summons under R.S.C., Order 53B, rule 8 (j). The respondent to the summons is required to enter an appearance (*ibid.*, rule 9). The evidence must prove the default, service of the notice and default in complying with it, and also, except where the applicant is the Registrar, the status of the applicant. For forms, see *Encycl. of Court Forms*, title Companies, Vol. 6, Forms Nos. 133 to 135.

Other related provisions.—Section 372 (3) (Court to which application should be made).

Definitions.—"Member" (section 26); "receiver or manager of the property of a company" (section 376); "company", "the Court", "document", "registrar of companies" (section 455 (1)).

376. Construction of references to receivers and managers.—

It is hereby declared that, except where the context otherwise requires—

- (a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
- (b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

NOTE

The section reproduces section 88 of the 1947 Act, which came into force on July 1, 1948.

PART VII

**APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED
UNDER FORMER ACTS**

377. Application of Act to companies formed and registered under former Companies Acts.—In the application of this Act to existing companies, it shall apply in the same manner –

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, as the case may be.

NOTES

The section reproduces section 316 of the 1929 Act as applied to the 1947 Act by section 107 (1) of the latter Act, which came into force on July 1, 1948. This and the following four sections apply the provisions of this Act to certain companies both British and foreign which are not registered under this Act.

Definitions.—"Company limited by shares", "company limited by guarantee", "unlimited company" (section 1); "company", "existing company", "Joint Stock Companies Act" (section 455 (1)).

378. Application of Act to companies registered but not formed under former Companies Acts.—This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, in the same manner as it is in Part VIII of this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, as the case may be.

NOTES

The section reproduces section 317 of the 1929 Act as applied to the 1947 Act by section 107 (1) of the latter Act, which came into force in July 1948.

Companies not formed under this Act.—See Section 382.

Definitions.—" Company ", " Joint Stock Companies Acts " (section 455 (1)).

379. Application of Act to unlimited companies re-registered under former Companies Acts.—This Act shall apply to every unlimited company registered as a limited company in pursuance of the Companies Act, 1879, section fifty-seven of the Companies (Consolidation) Act, 1908, or section sixteen of the Companies Act, 1929, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said Act of 1879, the said section fifty-seven or the said section sixteen, as the case may be.

NOTES

The section corresponds with section 318 of the 1929 Act, as applied to the 1947 Act by section 107 (1) of the latter Act, which came into force on July 1, 1948.

Company registered in pursuance of this Act.—See section 16, which reproduces section 16 of the 1929 Act.

Definitions.—" Limited company ", " unlimited company " (section 1 (2)).

380. Provisions as to companies registered under the Joint Stock Companies Acts.—(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power of altering articles under section ten of this Act shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

NOTES

The section reproduces section 319 of the 1929 Act as applied to the 1947 Act by section 107 (1) of the latter Act, which came into force on July 1, 1948.

Transfer of shares in manner hitherto in use.—The Joint Stock Companies Act, 1856, section 20 and Schedule, Form F, required the number of the shares to be stated. The Companies Act, 1844, section 54 and Schedule, Form K, contained a similar requirement, subject to the regulations of the company.

Alteration of capital.—See sections 59 to 69.

Memorandum.—See sections 2 to 5.

Definitions.—" Articles ", " company ", " Joint Stock Companies Acts ", " memorandum ", " share " (section 455 (1)).

381. Exclusion of companies registered in Northern Ireland or Eire.—Nothing in this Part of this Act shall apply to companies registered in Northern Ireland or Eire.

NOTE

The section corresponds with section 320 of the 1929 Act as applied to the 1947 Act by section 107 (1) of the latter Act, which came into force on July 1, 1948. Cf. section 461, *post*.

PART VIII

COMPANIES NOT FORMED UNDER THIS ACT AUTHORISED TO REGISTER UNDER THIS ACT

382. Companies capable of being registered.—(1) With the exceptions and subject to the provisions contained in this section,—

- (a) any company consisting of seven or more members, which was in existence on the second day of November, eighteen hundred

and sixty-two, including any company registered under the Joint Stock Companies Acts; and

- (b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company's being wound up:

Provided that—

- (i) a company registered in any part of the United Kingdom under the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;
- (iii) a company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
- (iv) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;
- (v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed) at a general meeting summoned for the purpose;
- (vi) where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three fourths of the members present in person or by proxy at the meeting;
- (vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

NOTES

The section corresponds with section 321 of the 1929 Act.

The statutory authorities of which mention is made in subsection 1 (a), (b) are the governing authorities as regards companies formed thereunder. While in some respects the requirements of those Acts are similar in application to this Act, there are in many cases marked divergences, and the decision of the Courts in regard to companies registered under this Act is not always relevant to the case of a company not so formed.

The effect of the present section is to allow companies of the type mentioned in paragraphs (a) and (b), *supra*, to register under this Act, excepting the companies stated in the proviso to subsection (1), *supra*.

Any company.—This will not include the registration of a company subsequent to the presentation of a winding up petition (*Re Hercules Insurance Co.* (1871), L.R. 11 Eq. 321, at p. 323; 10 Digest 1094, 7664). A company registered under the Joint Stock Companies Acts need not re-register (*Re London Indiarubber Co.* (1866), 1 Ch. App. 329; 10 Digest 987, 6832).

A company constituted according to law.—I.e. constituted as mentioned in the section (*Re Cussons, Ltd.* (1904), 73 L.J. Ch. 296; 9 Digest 77, 280). It is one which is constituted by registration under or in pursuance of some Act of Parliament or under letters patent or under some constitution *ejusdem generis* (*ibid.*), and does not include a partnership (*R. v. Joint Stock Companies Registrar, Ex parte Johnson* [1891] 2 Q.B. 598, C.A.; 9 Digest 77, 279). But if such a partnership is registered under the Act, the certificate is conclusive (*Hammond v. Prentice Brothers, Ltd.*, [1920] 1 Ch. 201; 9 Digest 51, 311).

Registration under this Act.—See sections 1, 12, 13 and 16, *ante*. A company, by registering under this Act may thereby acquire powers it did not have before. For example, a company after registration may wind up under section 287.

Proviso (1) to subsection (1).—*Seem* the effect is to preclude the companies there stated from registering under this Act.

Poll (subsection (2)).—The voting must be by a show of hands if a poll is not demanded (*Re Horbury Bridge Coal, Iron and Waggon Co.* (1879), 11 Ch. D. 109, C.A.; 9 Digest 571, 3798). See also the First Schedule, Table A, Part I, article 58.

Company's regulations.—I.e., its articles or Table A, if adopted, as the case may be.

Other related provisions.—Section 359 (banking companies registering as limited companies); section 136 (proxies); (sections 131, 132, 134, 135 (meetings generally); section 141 (resolutions); section 212 (liability of contributories)).

Definitions.—"Unlimited company", "company limited by shares", "company limited by guarantee" (section 1); "member" (section 26); "contributory" (section 213); "joint stock company" (section 383); "company", "company within the stannaries", "Joint Stock Companies Acts" (section 455 (1)).

383. Definition of joint stock company.—For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

NOTES

The section reproduces section 322 of the 1929 Act.

Share capital.—See section 61.

Definitions.—"Company limited by shares" (section 1); "member" (section 26); "company", "share" (section 455 (1)).

384. Requirements for registration by joint stock companies.—Before the registration in pursuance of this Part of this Act of a joint stock company, there shall be delivered to the registrar the following documents:—

- (a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
- (b) a copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—

(i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "limited" as the last word thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

NOTES

The section reproduces section 323 of the 1929 Act.

General Note.—It will be noted that the requirements as regards registration of a joint stock company under this part of the Act closely resemble the requirements as to registration in the case of a company formed and registered under this Act (as to which see generally sections 1 to 3, 7, 12). As to the evidence required, see section 387, *post*.

Distinguishing number.—Cf. section 74

Documents for filing.—For the forms, see Board of Trade Forms Nos. 17-22 (see S.R. & O. 1929 No. 823, Appendix V, *post*). See also Encyclopaedia of Forms and Precedents, Vol. 4, pp. 18, 19, 28-35.

Effect of registration.—See section 394.

Share capital.—See section 61.

Name of company.—See sections 388, 389, and cf. sections 17, 19.

Amount of guarantee.—See section 382 (1) (vii).

Definitions.—"Company limited by guarantee", "limited company" (section 1); "member" (section 26); "resolutions" (section 141); "joint stock company" (section 383); "registrar of companies", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 9; 18 Halsbury's Statutes 1001).

385. Requirements for registration by other than joint stock companies.—Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(a) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(b) a copy of any Act of Parliament; letters patent, deed of settlement, contract of copartnership, cost book regulations or other instrument constituting or regulating the company; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

NOTES

The section reproduces section 324 of the 1929 Act.

Amount of guarantee.—See section 382 (1) (vii).

Definitions.—"Company limited by guarantee" (section 1); "joint stock company" (section 383); "company", "director" (section 455 (1)).

386. Authentication of statements of existing companies.—The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

NOTES

The section reproduces section 325 of the 1929 Act.

Statutory declaration.—For the form, see Board of Trade Form No. 23 (S.R. & O. 1929 No. 823, Appendix V, *post*) and see Encyclopaedia of Forms and Precedents (2nd Edn.), Vol. 4, p. 32.

Definitions.—" Member " (section 26) ; " company ", " director ", " officer " (section 455 (1)).

387. Registrar may require evidence as to nature of company.

—The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

NOTES

The section reproduces section 326 of the 1929 Act.

Other related provisions.—Section 383 (joint stock company) ; section 384 (registration).

Definitions.—" Joint stock company " (section 383) ; " company ", " registrar " (section 455 (1)).

388. Change of name for purposes of registration.—Where the name of a company seeking registration under this Part of this Act is one by which it may not be so registered by reason of the name being in the opinion of the Board of Trade undesirable, it may, with the approval of the Board of Trade signified in writing change its name with effect from its registration as aforesaid :

Provided that the like assent of the members of the company shall be required to the change as is by section three hundred and eighty-two of this Act required to the registration under this Act.

NOTES

The section corresponds with section 78 (3) of the 1947 Act which came into force on July 1, 1948.

The effect of the section is that a company registering under this part of the Act may, if its registered name is considered undesirable by the Board of Trade, change that name with Board of Trade sanction, and such change will have effect as if the company was so registered in the first place. Any such change of name requires the assent of the same majority of members as was required to have that company registered under section 382 (see *ibid.*, subsection (1), provisos (v) and (vi)).

Name of company.—See section 389 and cf. sections 17, 19.

Other related provisions.—Section 382 (companies capable of being registered) sections 384, 385 (registration requirements).

Definitions.—" Member " (section 26) ; " company " (section 455 (1)).

389. Addition of " limited " to name.—When a company registers in pursuance of this Part of this Act with limited liability, the word " limited " shall form, and be registered as, part of its name :

Provided that this section shall not be taken as excluding the operation of section nineteen of this Act.

NOTES

The section combines section 328 of the 1929 Act and section 79 (1) of the 1947 Act. The latter provision came into force on December 1, 1947.

Effect of change.—The provisions of section 19, exempting certain companies from using the word " limited " as part of its name, are extended to companies registering under this part of the Act, provided they comply with the necessary requirements.

Definitions.—" Company " (section 455 (1)).

390. Certificate of registration of existing companies.—On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under the following provisions of this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated, and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

NOTES

The section reproduces section 329 of the 1929 Act.

Certificate of incorporation.—Cf. section 13. The certificate of incorporation is conclusive evidence that all requirements have been complied with (see section 15 (1)).

Payment of fees.—See section 424 (1).

Definitions.—" Limited company " (section 1); " company ", " registrar " (section 455 (1)).

391. Vesting of property on registration.—All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

NOTE

The section reproduces section 330 of the 1929 Act.

392. Saving for existing liabilities.—Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

NOTE

The section reproduces section 331 of the 1929 Act.

393. Continuation of existing actions.—All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

NOTE

The section reproduces section 332 of the 1929 Act.

394. Effect of registration under Part VIII.—(1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company, and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) Table A shall not apply unless adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

- (c) subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company ;
 - (d) subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;
 - (e) the company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company ;
 - (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;
 - (g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.
- (4) The provisions of this Act with respect to—
- (a) the registration of an unlimited company as limited ;
 - (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;
 - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of subsection (3) of section two hundred and ten thereof) shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression “instrument” includes deed of settlement, contract of copartnery, cost-book regulations and letters patent.

NOTES

The section corresponds with section 333 of the 1929 Act as applied to the 1947 Act by section 107 (1) of the latter Act. The latter provision came into force on July 1, 1948.

Effect of changes.—The section, although worded in terms practically identical with section 333 of the 1929 Act, has the extended application given by section 107 (1) of the 1947 Act, the effect of which is to apply the provisions of this Act, with certain modifications, to certain companies registered under earlier Acts as if they were companies limited by shares or by guarantee or unlimited companies, as the case may be, registered under this Act. Although subsection (6), *supra* (amending the 1929 Act) saves any existing power to alter the constitution of a company which registers under this Part of the Act, yet the power so saved will not enable that company to override the provisions of section 210 (3), which provides that, when an order under that section makes any alteration in or addition to a company's memorandum or articles, the company concerned cannot make any alteration in or addition to its memorandum or articles inconsistent with the Court's order without leave of the Court.

Companies registered in pursuance of this Part of the Act.—See section 377.

Company formed under this Act.—See section 1.

Registered memorandum.—See sections 2, 12.

Numbering of shares.—See section 74.

Company being wound up.—See sections 222, 278, 311.

Date of registration.—See section 377.

Adjustment of rights of contributories.—Cf. section 265.

Personal representatives.—See section 215.

Insolvent contributories.—See section 216.

Registration of unlimited company as limited.—See section 16.

Powers of unlimited company to increase or limit call up of share capital.—See section 64.

Power of limited company to limit call up of share capital.—See section 60.

Definitions.—"Company limited by guarantee", "limited company", "unlimited company" (section 1); "member" (section 26); "special resolution" (section 141); "contributory" (section 213); "joint stock company" (section 383); "articles", "company", "memorandum", "share", "Table A" (section 455 (1)).

395. Power to substitute memorandum and articles for deed of settlement.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of section five of this Act with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations shall so far as applicable apply to an alteration under this section with the following modifications:—

- (a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and
- (b) on the delivery to the registrar of a printed copy of the substituted memorandum and articles or the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

NOTES

The section combines section 334 of the 1929 Act and section 107 (2) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of changes.—The section applies the provisions of section 5 to any alteration under this section with the modifications there set out. The provisions of section 334 (2) of the 1929 Act are amended accordingly in subsection (2), *supra*.

Alteration of constitution.—A proposed alteration which involves a breach of contract may be restrained by injunction (see *Baily v. British Equitable Assurance Co.*, [1904] 1 Ch. 374, C.A.; 9 Digest 559, 3698; reversed on another point *sub. nom. British Equitable Assurance Co., Ltd. v. Baily*, [1906] A.C. 35; 10 Digest 1069, 7482).

Memorandum and articles.—See sections 2, 5, 6, 9, 10, 11, 12, 20, 23.

Applications to the Court.—An application to cancel is by petition (R.S.C. Order 53B, r. 5 (b), S.I. 1948 No. 1756). Applications to extend the time for registering documents are by summons (*ibid.*, r. 8 (b)).

Alteration of objects.—See section 5.

Objects of the company.—See section 2. The objects clause in a memorandum substituted for a deed of settlement must not merely set out the objects by referring to the old deed of settlement (*Royal Exchange Buildings, Glasgow, Proprietors*, [1911] S.C. 1337; 9 Digest 82, 315 iii).

Definitions.—"Special resolution" (section 141); "articles", "company", "memorandum", "registrar of companies", "the Court" (section 455 (1)).

396. Power of court to stay or restrain proceedings.—The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

NOTES

The section reproduces section 335 of the 1929 Act.

Stay of proceedings under this Act.—See section 228.

Petition for winding up.—See section 224.

Winding up order.—See section 225.

Creditor.—See section 223 (a).

Definitions.—"Contributory" (section 213); "company" (section 455 (1)).

397. Actions stayed on winding-up order.—Where an order has been made for winding up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

NOTES

The section reproduces section 336 of the 1929 Act.

Winding-up order.—See section 225.

Stay of proceedings.—The section is analogous to section 231.

PART IX

WINDING UP OF UNREGISTERED COMPANIES

398. Meaning of unregistered company.—For the purposes of this Part of this Act, the expression "unregistered company" shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:—

- (a) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them;

- (b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, the Companies Act, 1929, or this Act ;
- (c) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company ;
- (d) a limited partnership registered in England or Northern Ireland.

NOTES

The section substantially reproduces section 337 of the 1929 Act.

General note.—The section is a preliminary to sections 399 to 405.

Abandonment of Railways Acts.—For the winding up of railway companies under those Acts, see section 4 of the 1869 Act. Since the nationalisation of the railways, this power is now largely obsolete.

United Kingdom.—See section 14.

Partnership, etc., consisting of eight members.—This does not necessarily mean eight shareholders (*Re South London Fish Market Co.* (1888), 39 Ch.D. 324, C.A., at p. 335 ; 10 Digest 1094, 7669). The relevant time to consider the number of members is at the date of the presentation of the petition (*Re Bolton Benefit Loan Society, Coop v. Booth* (1879), 12 Ch.D. 679 ; 10 Digest 1095, 7670), but it is sufficient if eight persons admit that they are members and that the association is insolvent (*Re South of France Pottery Works Syndicate* (1877), 36 L.T. 651 ; 10 Digest 1094, 7668).

Foreign companies.—See section 406.

Partnerships and unregistered companies.—See also sections 429 to 435. A limited partnership registered in England may be wound up under the provisions of the Bankruptcy Act, 1914 (see *ibid.*, sections 127, 132 ; 1 Halsbury's Statutes 688, 692) ; if registered in Northern Ireland, it may be wound up there under the 1908 Act, as adapted by S.R. & O. 1922, No. 184 ; if registered in Scotland, it may be wound up there under the provisions of section 399 (9).

Definitions.—"Member" (section 26), "company", "Joint Stock Companies Acts" (section 455 (1)).

399. Winding up of unregistered companies.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in the following provisions of this section.

(2) If an unregistered company has a principal place of business situate in Northern Ireland, it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland.

(3) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in England or Scotland, according as its principal place of business is situate in England or Scotland, or if it has a principal place of business situate in both countries, to be registered in both countries, and the principal place of business situate in that part of Great Britain in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(4) No unregistered company shall be wound up under this Act voluntarily or subject to supervision.

(5) The circumstances in which an unregistered company may be wound up are as follows :—

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;
- (b) if the company is unable to pay its debts ;
- (c) if the court is of opinion that it is just and equitable that the company should be wound up.

(6) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts :—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor ;
- (b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;
- (c) if in England or Northern Ireland execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ;
- (d) if in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made ;
- (e) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(7) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court or the Court of Session, according as the railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up.

(8) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company.

(9) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may be provided by rules made by statutory instrument by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

NOTES

The section reproduces section 338 (1) of the 1929 Act, as applied to the 1947 Act by sections 107 (3), 122 (7) and the Eighth Schedule to the latter Act. These provisions of the 1947 Act, so far as they affect this section, came into force on July 1, 1948. As to section 338 (2) of the 1929 Act, see section 400, and as to *ibid.*, subsection (3), see section 405.

Effect of changes.—Section 107 (3) of the 1947 Act applied section 90 of that Act (as to which, see now section 225 (2)), to the winding up of an unregistered company under this Part of the Act and section 225 (2), is now applied together with other provisions of this Act with respect to winding up. Section 122 (7) and the Eighth Schedule to the 1947 Act applied section 338 (1) of the 1929 Act (*inter alia*) to the provisions of the 1947 Act, and the extended application is now implied in the present section.

Provisions of this Act with respect to winding up.—See sections 225, 278, 311, but note the exceptions in subsections (4) (5), *supra*.

Unregistered company.—See section 398, and generally Buckley on the Companies Act, 1929 (11th Edn.), notes to section 338. For examples of companies which can be wound up under this Part, see 5 Halsbury's Laws (2nd edn.) pp. 846 to 848.

Court having jurisdiction.—See sections 218, 220.

Registered office.—Cf. sections 107, 218 (8).

Company dissolved.—See sections 274, 290, 300, 352.

Company carrying on business, etc.—Cf. section 245.

Just and equitable.—See section 222 (f) and the notes thereto.

Company unable to pay its debts.—Cf. section 222 (e), 223.

Execution.—Cf. sections 325, 326.

Statutory instrument.—See the Statutory Instruments Act, 1946, sections 1, 5 (39 Halsbury's Statutes 784, 786).

Winding up of railway company.—The proviso to section 338 (1) (f) of the 1929 Act, with which this subsection corresponds, is not here reproduced. That proviso preserved the jurisdiction of the Chancery Division in winding up a railway under the Abandonment of Railways Acts (14 Halsbury's Statutes 95, 187), and to that extent corresponded with section 164 of the 1929 Act. This latter provision was repealed by section 96 (1) and the Ninth Schedule to the 1947 Act, but the proviso to section 338 (1) (f) was there overlooked. This was remedied in the present Act, and to that extent represents new law rather than consolidation. In view of the nationalisation of railways, however, it is of little practical importance. Its effect is that jurisdiction in winding up is now governed in all cases by Part III of the Supreme Court of Judicature (Consolidation) Act, 1925 (13 Halsbury's Statutes 218).

Definitions.—"Member" (section 26), "unregistered company" (section 398); "company", "director", "officer", "the Court" (section 455 (1)); "statutory instrument" (Statutory Instruments Act, 1946, section 1; 39 Halsbury's Statutes 784).

400. Oversea companies may be wound up although dissolved.

—Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

NOTES

The section reproduces section 338 (2) of the 1929 Act.

Company formed outside Great Britain, but carrying on business here.—See section 406. Such company may be wound up here irrespective of the number of its members (see section 398 (c)). It must have a place of business in England or Scotland (see section 399 (3)), but not necessarily an established place of business; (*Re Tovarishestvo Manufactor Liudvig-Rabeneck*, [1944] Ch. 404; [1944] 2 All E.R. 556; 2nd Digest Supp.).

Dissolved or otherwise ceased to exist by virtue of laws of country of incorporation.—See *Re Union Bank of Calcutta*, *Ex parte Watson* (1850), 3 De G. & Sm. 253; 10 Digest 1207, 8540; *Re Russian and English Bank*, [1932] 1 Ch. 663; Digest Supp. When a winding-up order has been made, the dissolved company must be deemed to be revived in order to secure the effective collection and distribution of the assets (*Russian and English Bank and Florance Montefiore Guedalla v. Baring Brothers & Co. Ltd.*, [1936] A.C. 405; [1936] 1 All E.R. 505, H.L.; Digest Supp.). The Court will not make an order for the winding up of an inchoate foreign company which has never come into existence (*Re Imperial Anglo-German Bank* (1872), 26 L.T. 229, C.A.; 10 Digest 1208, 8551). The fact, however, that a liquidation has already commenced in the country of incorporation will not affect the jurisdiction of the Court to make a winding-up order, and the winding up will then be conducted as ancillary to the liquidation in that country (*Re English, Scottish and Australian Chartered Bank*, [1893] 3 Ch. 385, C.A., *per* Vaughan-Williams, L.J., at p. 394; 10 Digest 1208, 85567).

Definitions.—"Unregistered company" (section 398); "company" (section 455 (1)).

401. Contributories in winding up of unregistered company.—

(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid :

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy or insolvency of any contributory or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories and to the liabilities of husbands and wives respectively shall apply.

NOTES

The section reproduces section 339 of the 1929 Act.

Unregistered Company.—See section 398.

Liability to contribute.—I.e., liability to contribute as a partner or member (*Re European Society Arbitration Acts, Ex parte British Nation Life Assurance Association (Liquidators)* (1878), 8 Ch.D. 679, C.A., at p. 708; 10 Digest 1084, 7586), and not as a mere debtor (*Lee and Moor's Case* (1868), L.R. 5 Eq. 368; 10 Digest 1080, 7563). A transferor of shares when calls are in arrear is not necessarily a contributory, (*Re Hoylake Rail. Co., Ex parte Littledale* (1874), 9 Ch. App. 257; 10 Digest 1143, 8081); nor is an officer of the company who is liable for misfeasance (*Davies' Case* (1890), 45 Ch.D. 537; 3 Digest 136, 103). A member of an unregistered company which is a corporation is not liable on that account except for his liability as a member of the corporation (*Re Sheffield and South Yorkshire Permanent Building Society* (1889), 22 Q.B.D. 470; 7 Digest 465, 71). A debtor, or a *cestui que trust* of shares may be liable in certain conditions, although not as contributory (*Re European Society Arbitration Acts, Ex parte British Nation Life Assurance Association (Liquidators)*, *supra*). As to the liability of persons buying *bona fide* in the name of a nominee, see *King's Case* (1871), 6 Ch. App. 196; 10 Digest 1108, 7794. See further as to the liability to contribute, 5 Halsbury's Laws (2nd edn.) pp. 849, 850; Buckley on the Companies Act, 1929 (11th edn.), notes to section 339.

Liability as contributories.—See sections 212, *et seq.* The liability of the contributory is in the nature of a speciality debt (see section 214).

Adjustment of rights of contributories.—Cf. section 265.

Costs of winding up.—See *Andrews' and Alexander's Case* (1869), L.R. 8 Eq. 176, at p. 196; 10 Digest 1081, 7565.

Company within the stannaries.—See sections 357, 359.

Personal representatives; contributory's bankruptcy; married women.—See sections 215 to 217. The liquidator of an unregistered company can, where a contributory becomes bankrupt, prove in the bankruptcy for any sum due to the company as a separate debt in competition with the separate creditors (*Re Adams, Ex parte Ball* (1874), 10 Ch. App. 48; 4 Digest 469, 4230).

Past member.—See section 212, although it should be noted that there is nothing in the present section exonerating a past member as in the case of that section. In the absence of special provision, however, a past member of an unregistered corporation is not liable as a contributory (*Re Sheffield and South Yorkshire Permanent Building Society, supra*).

Definitions.—"Member" (section 26); "contributory" (section 213); "company", "company within the stannaries" (section 455 (1)); "person" (Interpretation Act 1889, section 19; 18 Halsbury's Statutes 1001).

402. Power of court to stay or restrain proceedings.—The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a

petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

NOTES

The section reproduces section 340 of the 1929 Act.

Stay of Proceedings.—See sections 226, 231, 256, 308. See also *Graham v. Edge* (1888), 20 Q.B.D. 538; on appeal, 20 Q.B.D. 683, C.A.; 10 Digest 1097, 7688.

Petition for winding up.—See section 224, 312, 352, 353.

Winding-up order.—See section 399, and cf. section 225.

Unregistered company. See section 398.

Definitions.—"Contributory" (section 213); "unregistered company" (section 398); "company" (section 455 (1)).

403. Actions stayed on winding-up order.—Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

NOTES

The section reproduces section 341 of the 1929 Act.

Unregistered company.—See section 398.

Order for winding up of an unregistered company.—See section 399.

Actions stayed.—Cf. section 226, 231. The section applies only to actions against contributories in their capacity as such (*Re South of France Pottery Works Syndicate* (1877), 37 L.T. 260, C.A.; 10 Digest 1097, 7686).

Calls on contributories.—Cf. section 275.

Subject to terms.—See *Gray v. Roper* (1866), L.R. 1 C.P. 694; 10 Digest 1096, 7685.

Other related provisions.—See sections 429, 434, 435.

Definitions.—"Contributory" (section 213); "the Court" (section 455 (1)).

404. Provisions of Part IX cumulative.—The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

NOTES

The section reproduces section 342 of the 1929 Act.

General note.—The section applies the whole of Part V of this Act (Winding-up), except as expressly provided (*Rudow v. Great Britain Mutual Life Assurance Society* (1881), 17 Ch.D. 600, C.A., at p. 612; 10 Digest 1097, 7687). See also *Re Adams, Ex parte Ball* (1874), 10 Ch. App. 48; 4 Digest 469, 4230, and section 405.

Unregistered company.—See section 398. See also sections 435.

Winding up by the Court.—See section 222.

Power of liquidator.—See sections 245, *et seq.*

Powers of the Court.—See generally sections 256 to 274, 346 to 352.

405. Saving for enactments providing for winding up under former Companies Acts.—Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership,

association or company being wound up, or being wound up as a company or unregistered company, under the Companies Act, 1929, or any enactment repealed by that Act.

NOTES

The section corresponds with section 338 (3) of the 1929 Act. As to section 338 (1), (2), see sections 399, 400.

PART X

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN

Provisions as to Establishment of Place of Business in Great Britain

406. Application of ss. 407 to 414.—The next eight following sections shall apply to all oversea companies, that is to say, companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, and companies incorporated outside Great Britain which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

NOTES

The section corresponds with section 343 of the 1929 Act.

Commencement of this Act.—See section 462.

Place of business in Great Britain.—See section 415. This will not include an agent acting for a company not formed in this country and which, while carrying on business here, has no office in this country (*Lord Advocate v. Huran and Erie Loan and Savings Co.*, [1911] S.C. 612; 10 Digest 1198, *m.*).

Companies formed in Ireland and having a place of business in this country are companies to which this Part of the Act applies.

Other related provisions.—See sections 429, 434, 435.

407. Documents, etc., to be delivered to registrar by oversea companies carrying on business in Great Britain.—(1) Oversea companies which, after the commencement of this Act, establish a place of business within Great Britain shall, within one month of the establishment of the place of business, deliver to the registrar of companies for registration:—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors and secretary of the company containing the particulars mentioned in the next following subsection;
- (c) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The list referred to in paragraph (b) of the foregoing subsection shall contain the following particulars, that is to say,—

- (a) with respect to each director,—

- (i) in the case of an individual, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and,

- (ii) in the case of a corporation, its corporate name and registered or principal office ;
- (b) with respect to the secretary or, where there are joint secretaries, with respect to each of them,—
 - (i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address ; and
 - (ii) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office :

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (b) of this subsection.

Paragraphs (b), (c) and (d) of subsection (9) of section two hundred of this Act shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section ;

(3) Oversea companies, other than those mentioned in subsection (1) of this section, shall, if at the commencement of this Act they have not delivered to the registrar—

(a) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section :

(b) in the case of a company not so mentioned, the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917 ;

continue subject to the obligation to deliver those documents and particulars in accordance with the said Act of 1929 or the said Acts of 1908 and 1917, as the case may be.

NOTES

The section combines section 344 of the 1929 Act and section 113 of the 1947 Act. The latter provision came into force on July 1, 1948.

General note.—The section applies to overseas companies which establish a place of business in Great Britain after July 1, 1948. Companies which have already before that date established such a place of business and complied with the requirements of any of the earlier Acts in force at the date of such establishment are discharged from any further compliance. Subsection (3), *supra*, makes it clear that these companies have nothing further to do. See generally as to companies formed outside Great Britain, 5 Halsbury's Laws (2nd edn.) pp. 852 *et seq.*

Effect of changes.—The particulars with respect to directors of foreign companies to be contained in the register of directors and secretaries (see section 200,) and any alterations therein to be notified to the registrar of companies, must now include particulars of the company's secretary, including any person who occupies an analogous position by whatever name he is called (subsections (1), (2), *supra*). The provisions as to the particulars of name and nationality to be included in the register of directors and secretaries (see section 200 (9)) and the filing of a copy thereof with the Registrar (*ibid*, subsection (5)), apply also to directors of foreign companies as they do to directors of companies registered in this country except as to stating particulars of other directorships or the date of their birth (subsection (2), *supra*).

Certified copy of charter, etc.—For the requirements for such certified copy under the 1929 Act, see Companies (Forms) Order, 1929, rule 2 in Appendix V, *post*.

Certified translation.—For the form, see Board of Trade Form 1F (S.R. & O. 1929, No. 823, Schedule, Appendix V, *post*).

Commencement of this Act.—See section 462.

List of directors.—For the form, see Board of Trade Form No. 2F (S.R. & O. 1929, No. 833, Schedule, Appendix V, *post*).

Register of directors and secretary.—Subject to the proviso to subsection (2), *supra*, see generally, section 200.

Service of notice on oversea company.—See section 412.

Place of business.—See section 406. A foreign company carrying on business here is liable to be sued in an English Court (*Compagnie Générale Trans-Atlantique v. Law (Thomas) & Co., La Bourgogne*, [1899] A.C. 431; 13 Digest 431, 1540), even where such business is carried on only for a limited period, provided it is substantial (*Dunlop Pneumatic Tyre Co. v. Act. für Motor und Motorfahrzeugbau vorm. Cudell & Co.*, [1902] 1 K.B. 342, C.A.; 13 Digest 430, 1532).

Scottish firm.—See note to section 200.

Other related provisions.—Section 406 (general provisions); section 409 (filing where documents, etc., altered); section 415 (interpretation provisions).

Registered Office.—See section 107.

Definitions.—"Oversea company" (section 406); "certified," "director", "place of business", "secretary" (section 415); "articles", "company", "director", "document", "memorandum", "registrar of companies" (section 455 (1)); "corporation" (section 455 (3)).

408. Power of oversea company to hold lands.—Where an oversea company has delivered to the registrar of companies—

- (a) in the case of a company to which subsection (1) of the last foregoing section applies, the documents and particulars therein mentioned;
- (b) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;
- (c) in the case of any other company, the documents and particulars specified in paragraphs (a), (b) and (c) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

it shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

NOTES

The section reproduces section 345 of the 1929 Act except for an amendment as to the power of foreign companies to hold lands, effected by section 111 of the 1947 Act. The latter provision came into force on December 1, 1947.

General note.—The section provides that once an oversea company has complied with its obligations, whether under this Part of the Act or under the like provisions of earlier Acts, it has power to hold land in this country. The section makes it clear that further compliance is not necessary every time the law is changed; and thus non-compliance with the provisions of the present Act in the case of a company which has complied e.g., with the corresponding provisions of the 1929 Act will not involve forfeiture of such land. Once a company has complied with what the law was when it established its place of business here, it has to take no further action.

Effect of changes.—Section 345 of the 1929 Act conferred power on companies incorporated in a British possession to hold lands in the United Kingdom. Section 111 of the 1947 Act applied that power also to all companies incorporated outside the United Kingdom, elsewhere than in a British possession, being companies to which this Part of the Act applies.

Power of company to hold lands.—See section 14.

Registration of charges.—See section 106.

Company incorporated under this Act.—See section 1.

Definitions.—"Oversea company" (section 406); "company", "document", "registrar of companies" (section 455 (1)).

409. Return to be delivered to registrar by oversea company where documents, etc., altered.—If any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of an oversea company or any such instrument as aforesaid; or

- (b) the directors or secretary of an overseas company or the particulars contained in the list of the directors and secretary; or
 - (c) the names or addresses of the persons authorised to accept service on behalf of an overseas company;
- the company shall, within the prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

NOTES

The section combines section 346 of the 1929 Act and section 113 (1) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of change.—Any alteration in the list of directors to be filed with the Registrar by a company incorporated outside Great Britain but carrying on a business in Great Britain, must now include particulars of any person occupying the position of a secretary by whatever name called.

Particulars to be filed with registrar.—See section 407.

Prescribed time.—See Companies (Forms) Order, 1929, rule 3, Appendix V, *post*.

Prescribed particulars.—See Board of Trade Forms Nos. 4F, 5F, 6F. The Companies (Forms) Order, 1948 (S.I. 1948 No. 1518), Appendix V, *post*, has not amended these forms to provide for the revised particulars and changes therein (as to which, see section 407).

Definitions.—"Overseas company" (section 406); "director" (sections 415, 455 (1)); "secretary" (section 415); "articles", "company", "memorandum", "prescribed", "registrar" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

410. Accounts of overseas company.—(1) Every overseas company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Act (subject, however, to any prescribed exceptions) it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar of companies:

Provided that a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company, need not comply with the foregoing provisions of this subsection if there is delivered to the registrar a certificate signed by a director and by the secretary of the company that, had section one hundred and twenty-nine of, and the Seventh Schedule to, this Act extended to Northern Ireland it would at the date of the certificate have been an exempt private company.

(2) If any such document as is mentioned in the foregoing subsection is not written in the English language, there shall be annexed to it a certified translation thereof.

NOTES

The section combines section 347 of the 1929 Act and section 112 (1) (2) of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—With certain exceptions, foreign companies are now subject to the same requirements as British companies as regards the form and contents (including documents to be annexed) of a balance sheet and profit and loss account, and in the case of a holding company, of group accounts. A company registered in Northern Ireland which otherwise fulfils the conditions required for it to rank as an exempt private company, is exempt from the requirements as to accounts if it delivers to the Registrar a certificate signed by a director and the secretary, that those conditions have been fulfilled.

Overseas company.—See section 406.

Balance sheet and profit and loss account.—See sections 148 and 149.

Group accounts.—See sections 150 to 153.

Prescribed exceptions.—The normal rule is that foreign companies are subject to exactly the same requirements as British companies, particularly as regards accounts and the disclosure of matters under British law which might not have to be disclosed

under foreign law. In some circumstances, this might be inconvenient and there might be awkward repercussions for British companies abroad. For that reason, power is given in the section to make exceptions.

General meeting.—See section 131.

Company registered in Northern Ireland.—The proviso to subsection (1) extends the provisions as to exempt private companies (see section 129) to a company registered in Northern Ireland which otherwise fulfils the necessary conditions for it to rank as an exempt private company in the circumstances there indicated.

Subsection (2).—The documents here referred to are primarily those required to be annexed to the accounts. The subsection, in form, will, of course apply also to the certificate mentioned in the proviso to subsection (1). In practice, however, it is not likely that such a certificate will be issued in a foreign language.

Definitions.—“Private company” (section 28); “group accounts” (sections 150 (1), 455 (1)); “exempt private company” (section 129 (4)); “holding company” (section 154); “oversea company” (section 406); “director”, “secretary” (section 415); “accounts”, “company”, “document”, “prescribed”, “registrar of companies” (section 455 (1)).

411. Obligation to state name of oversea company, whether limited, and country where incorporated.—Every oversea company shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

NOTES

The section combines section 348 of the 1929 Act and section 114 of the 1947 Act. The latter section came into force on July 1, 1948.

Effect of changes.—The 1929 Act is amended so as to provide that the requirements as to the publication of the company's name does not apply to advertisements. The effect is to bring the provisions as to the publication of name, into line with those of section 108, in the case of British companies.

Oversea company.—See section 406.

Prospectus.—See sections 415, 417 to 432, 455 (1), and Cf. section 38.

Definitions.—“Member” (section 26); “prospectus” (sections 415, 455 (1)); “company”, “debenture”, “share” (section 455 (1)).

412. Service on oversea company.—Any process or notice required to be served on an oversea company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part of this Act and left at or sent by post to the address which has been so delivered:

Provided that—

- (a) where any such company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices; or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Great Britain.

NOTES

The section reproduces section 349 of the 1929 Act.

Service of process.—As to the persons referred to, see section 407 (1) (c), *ante*. The delivery of a name and address for registration amounts to a submission to the jurisdiction of the Court (*Employers' Liability Assurance Corporation v. Sedgwick, Collins & Co.*, [1927] A.C. 95; Digest Supp.), for all purposes (*The Madrid*, [1937] P. 40; [1937] 1 All E.R. 216; Digest Supp.). The Court will give leave to serve out of the jurisdiction a person whose name and address have been delivered, when the address so delivered is out of the jurisdiction (*Re Dublin Corporation and Fidelity and Deposit Co. of Maryland, Ex parte Dublin Corporation* (1918), 52 I.L.T. 42). If a writ is addressed to the company in addition to the person whose name is so delivered, the writ is not defective (*Fester Fothergill and Hartung v. Russian Transport and Insurance Co.*, [1927] W.N. 27, C.A.; Digest Supp.).

Definitions.—"Oversea company" (section 406); "place of business" (section 415); "company", "document", "registrar" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

413. Office where documents to be filed.—(1) Any document, which any overseas company is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly.

(2) If any overseas company ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the fact to the registrar of companies for that part, and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease.

NOTES

The section reproduces section 350 of the 1929 Act, except for the proviso to subsection (1) of that section, which exempted from the provisions of that section documents delivered before the commencement of that Act. Such exemption is now no longer required and the proviso has not, therefore, been re-enacted.

Documents for filing.—See section 407.

Definitions.—"Oversea company" (section 406); "place of business" (section 415); "company", "documents", "registrar of companies" (section 455 (1)).

414. Penalties.—If any overseas company fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

NOTES

The section corresponds with section 351 of the 1929 Act, except for a minor amendment as to the circumstances in which liability under the section is incurred, effected by section 105 (4) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of change.—The penalty for default in complying with the provisions of the section is not now incurred by an officer or agent unless the contravention or default was knowingly and wilfully authorised or permitted by him.

Definitions.—"Oversea company" (section 406); "against", "company", "officer" (section 455 (1)).

415. Interpretation of ss. 407 to 414.—For the purposes of the foregoing provisions of this Part of this Act:—

- the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;
- the expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act ;
- the expression "place of business" includes a share transfer or share registration office ;
- the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act ;
- the expression "secretary" includes any person occupying the position of secretary by whatever name called.

NOTES

The section combines section 352 of the 1929 Act and section 113 (1) of the 1947 Act.

Effect of change.—Consequent upon the requirement of section 407, whereby particulars of the secretary must now be included among the particulars required by that section to be delivered to the Registrar, a definition of "secretary", in accordance with that given in section 113 (1) of the 1947 Act, is added to the definitions given in this section.

Director.—Cf. section 455 (1) (2).

Prospectus.—Cf. section 455 (1).

416. Special provisions as to delivery of documents by companies incorporated in Channel Islands or Isle of Man.—Where a company incorporated in the Channel Islands or the Isle of Man—

(a) after the commencement of this Act establishes a place of business in England or Scotland ; or

(b) has before the commencement of this Act established and at the commencement of the Act continues to have a place of business in England or Scotland ;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland.

NOTES

The section reproduces section 353 of the 1929 Act, as applied to the 1947 Act by section 122 (7) and the Eighth Schedule to the Act, which, so far as it affects this section, came into force on July 1, 1948. The proviso to section 353 of the 1929 Act, which provided that, in the case of companies which had established a place of business here, the time for the delivery, etc., of the necessary documents is to run from the commencement of that Act, is not reproduced here, for obvious reasons.

The effect of the section is that companies incorporated in the Channel Islands or the Isle of Man with a place of business in England or Scotland, must comply with the provisions of this Act, as to the filing, etc., of documents with the Registrar (as to which, see section 409) in the same way as if those companies had been registered in England or Scotland. These requirements are, however, not extended so as to require the payment of fees in respect of the registration of such companies.

Commencement of this Act.—See section 462.

Place of business in England.—See section 406, 415.

Company registered in England and Scotland.—See section 12.

Prospectuses

417. Dating of prospectus and particulars to be contained therein.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside

Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain unless the prospectus is dated and—

- (a) contains particulars with respect to the following matters :—
 - (i) the instrument constituting or defining the constitution of the company ;
 - (ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;
 - (iii) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected ;
 - (iv) the date on which and the country in which the company was incorporated ;
 - (v) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain ;
- (b) subject to the provisions of this section, states the matters specified in Part I of the Fourth Schedule to this Act and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule :

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) of this subsection shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Fourth Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of the foregoing subsection, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) of this section unless the form is issued with a prospectus which complies with this Part of this Act and the issue whereof in Great Britain does not contravene the provisions of section four hundred and nineteen of this Act :

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1) of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof ; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section—

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

NOTES

The section combines sections 354 (1), (2), 355 (2) to (4) of the 1929 Act and section 110 (1), (5) of the 1947 Act. The latter provisions came into force on July 1, 1948.

General note.—This and the next six sections deal with the prospectus requirements of foreign companies inviting offers for subscription for shares or debentures. It should be noted that section 356 of the 1929 Act was repealed as from August 8, 1944, by the Prevention of Fraud (Investments) Act, 1939, section 25 (32 Halsbury's Statutes 140), and S.R. & O., 1944, No. 864. These seven sections between them represent an amplification of sections 354 and 355 of the 1929 Act, as amended by section 110 of the 1947 Act, and have been so divided for convenience so as to produce a somewhat more logical structure than in the earlier Act. As to financial restrictions, see Borrowing (Control and Guarantees) Act, 1946, s. 1 (39 Halsbury's Statutes 315) and the Control of Borrowing Order, 1947, S.R. & O. 1947 No. 945.

Effect of changes.—For a prospectus to comply with this Part of the Act (i.e., prospectuses of companies incorporated or to be incorporated outside Great Britain), it is no longer necessary for it to state the objects of the company (as was formerly required under the 1929 Act), but it must include, where it incorporates a statement purporting to be by an expert, the necessary consent by the expert (see section 419) (subsections (1), (3), *supra*). The section also applies to such prospectuses (with certain modification) the relevant provisions of the Fourth Schedule (see subsection (1) (b), *supra*). An offer of shares or debentures to existing members, etc., is a domestic affair of those concerned, and is not interfered with by this subsection (see subsection (5) (a), *supra*), nor are the requirements as to foreign prospectuses of foreign companies applicable where further issues of shares or debentures are made which are already dealt in on a prescribed stock exchange, in certain cases (see subsection (5) (b), *supra*). These provisions were introduced by section 110 (5) of the 1947 Act.

Prospectus.—See generally, sections 37, 41.

Offering shares or debentures for subscription.—Cf. section 38. As to an invitation to existing members or debenture holders, see subsection (5), *supra*.

Company incorporated outside Great Britain.—I.e., an overseas company (see section 406). It should be noted that these prospectus requirements apply regardless of whether or not the company proposes to establish a place of business in this country. The provisions, taken literally, prohibit the issue of a prospectus by an overseas company unless it complies in every respect with the section, and the fact that such company does not propose to establish a place of business, does not affect the matter at all.

Instrument defining the constitution of the company.—In the case of an English company, this would be the articles (see the proviso to subsection (1) (a), *supra*), and accordingly, that expression is to be so construed (*ibid.*).

Translation certified in the prescribed manner.—Cf. section 41 (1).—See also Companies (Forms) Order, 1929, rule 5, in Appendix V, *post*.

Address in this country.—See section 406, and cf. section 107.

Company entitled to commence business.—It should be noted that section 109, would not apply in this case. Presumably, the date here referred to will depend upon the law affecting the matter of the country in which the company was incorporated.

Subsection (2).—Cf. section 38 (3).

Provisions of section 419 of this Act.—I.e., the provisions relating to statements by experts and to allotments. See also sections 421, 422.

Subsections (4) and (5).—Section 38 (4), (5), is applied *mutatis mutandis* to prospectuses coming within this section.

Prescribed Stock Exchange.—The Stock Exchange, London, is a prescribed Stock Exchange. See S.I. 1948 No. 1592.

Other related provisions.—See section 423. For penalty see section 421.

Definitions.—"Member" (section 26); "place of business" (section 415); "articles", "company", "debenture", "director", "document", "prescribed", "prospectus", "share", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

418. Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.—(1) Where—

- (a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain; and
- (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may on the request of the applicant be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

- (a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and
- (b) except in so far as it requires a prospectus to be dated, the last foregoing section shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

NOTES

The section corresponds with section 110 (5) of the 1947 Act which came into force on July 1, 1948.

The effect of the section is to relax the requirements as to prospectuses of companies coming within this Part of the Act in certain cases. There are (i) further issue of shares or debentures already dealt in or quoted on a stock exchange, and (ii) new issues in respect of which a certificate of exemption is granted. In effect, section 39, is applied *mutatis mutandis* to prospectuses coming within this Part of the Act.

Offer for subscription by a company to which this section applies.—I.e., companies within the meaning of section 406. It should be noted that under subsection (1) (a), the provisions will apply regardless of whether the company concerned has a place of business in this country.

Offer to the public.—The effect of these words is to adapt the provisions to an offer for sale, i.e. where the company itself does not offer the shares or debentures directly to the public but instead offers the issue to an issuing house with a view to the latter in turn offering it to the public for subscription. See also sections 45 and 423.

Prospectus issued generally.—Cf. section 50.

Place of business.—See section 415.

Prescribed Stock Exchange.—The Stock Exchange, London, is a prescribed Stock Exchange. See S.I. 1948 No. 1592.

Certificate of exemption.—See section 39.

Form in which information required by stock exchange.—See section 39.

Definitions.—"Place of business" (section 415); "debenture", "issued generally", "prospectus", "share" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

419. Provisions as to expert's consent, and allotment.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain,—

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections fifty and fifty-one of this Act so far as applicable.

(2) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

NOTES

The section corresponds with section 110 (1), (6), (7) of the 1947 Act, which came into force on July 1, 1948. The section applies certain provisions of this Act relating to prospectuses to companies to which this Part of the Act applies, i.e., to companies within the meaning of section 406. The relevant provisions applied are those relating to experts (see section 40) and to allotments (see sections 50, 51). The section applies the same construction to the expressions "expert", and "statement included in a prospectus" as in section 46. The effect of the section is that persons who issue a prospectus of an overseas company have to put themselves in the position in which they would be if they were issuing a prospectus of a company incorporated in Great Britain.

Definitions.—"Place of business" (section 415); "company", "debenture", "prospectus", "share" (section 455 (1)); "person" (Interpretation Act 1889, section 19; 18 Halsbury's Statutes 1009).

420. Registration of prospectus.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless before the issue, circulation or distribution of the prospectus in Great Britain, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy—

- (a) any consent to the issue of the prospectus required by the last foregoing section;
- (b) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case

of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section four hundred and eighteen of this Act to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy or, as the case may be, a memorandum of that contract; and

- (c) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in paragraph (b) of the foregoing subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

NOTES

The section combines section 354 (1) of the 1929 Act and section 110 (2) (4), (5) and (6) of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—The copy prospectus required to be filed with the Registrar of Companies must now have endorsed thereon or attached thereto, the consent of any expert under section 419, and the documents referred to in subsection (1) (b) and (c), *supra* (material contracts and reporting accountant's statements) (subsection (1)). Any material contract so required to be disclosed, but which is in a foreign language, must be translated into English and a certified copy of the translation filed in its place (subsection (2)).

Registration of prospectus.—Other than in relation to a prospectus not issued generally (as to which, see section 50), the section applies section 41 (1), *mutatis mutandis* to prospectuses coming within this Part of the Act. As to the companies to which these provisions refer, see section 406.

Offering for subscription shares, etc.—See section 418.

Other related provisions.—See section 38 (3).

Definitions.—"Certified", "director", "place of business" (section 415); "company", "debenture", "director", "prescribed", "prospectus", "registrar of companies", "share" (section 455 (1)).

421. Penalty for contravention of four foregoing sections.—Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of the four last foregoing sections shall be liable to a fine not exceeding five hundred pounds.

NOTES

The section reproduces section 354 (6) of the 1929 Act as applied to the 1947 Act by section 110 (1) of the latter Act, which came into force on July 1, 1948.

Effect of change.—The term "person" will now include an "expert" (as defined in section 419 (2)); if the prospectus includes a misstatement by him.

Definitions.—"Debenture", "share", "prospectus" (sections 423 (3), 455 (1)).

422. Civil liability for mis-statements in prospectus.—Section forty-three of this Act shall extend to every prospectus offering for subscrip-

tion shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, with the substitution, for references to section forty of this Act, of references to section four hundred and nineteen thereof.

NOTES

The section combines section 354 (5) of the 1929 Act and section 110 (1), (6), of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—The provisions of section 43 with regard to liability for mis-statements in a prospectus are applied to prospectuses coming within the meaning of this Part of the Act, and references therein to section 40, will be construed as references to section 149. The effect is to apply the provisions of this Act relating to civil liability for misstatements in prospectuses of companies coming within this Part of the Act which were originally exempted from them by section 354 (2) of the 1929 Act.

Definitions.—"Place of business" (section 415); "debenture", "prospectus", "share" (sections 423 (3), 455 (1)).

423. Interpretation of provisions as to prospectuses.—(1)

Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section forty-five of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Act.

(3) In this Part of this Act the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

NOTES

The section combines section 354 (3), (4), (7) of the 1929 Act and section 110 (7) of the 1947 Act. The latter provision came into force on July 1, 1948.

Effect of change.—The section applies section 45 to prospectuses coming within this part of the Act, as regards an offer for sale to the public being deemed to be a prospectus issued by the company (see also section 418). Certain definitions of the 1929 Act as amended by the 1947 Act are here incorporated (subsections (2), (4)).

Definitions.—"Agent", "debenture", "document", "prospectus", "share" (section 455 (1)).

PART XI

GENERAL PROVISIONS AS TO REGISTRATION

424. Registration offices in England and Scotland.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England and Scotland at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise direct, be done to or by the existing registrar of companies in England or Scotland, as the case may be, or in his absence to or by such person as the Board may for the time being authorise :

Provided that, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

NOTES

The section reproduces section 312 of the 1929 Act.

425. Fees.—(1) In respect of the several matters mentioned in the first column of the table set out in Part I of the Twelfth Schedule to this Act, there shall, subject to the limitations imposed by Part II of that Schedule, be paid to the registrar the several fees specified in the second column of that table :

Provided that no fees shall be charged in respect of the registration in pursuance of Part VIII of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

NOTES

The section combines sections 313 and 327 of the 1929 Act and sections 81 (2), (3), 122 (7) of the 1947 Act and the Eighth Schedule thereto. The last-mentioned provisions of the 1947 Act, so far as they affect this section, came into force on July 1, 1948.

Effect of changes.—Section 81 of the 1947 Act made certain alterations in the fees payable on registration by companies limited by guarantee and unlimited companies where either type of company has a share capital (now incorporated in the Twelfth Schedule, *post*). If the fees which would have been paid on the basis of its membership would be higher than those paid on the basis of the amount of its share capital, the higher fee is payable on registration and the articles must state the number of members with which it proposes to be registered, notwithstanding that it has a share capital (see section 7 (3)). Similar provision is made in the case of registration of an increase in share capital or membership. The details of the altered provisions are set out in the Twelfth Schedule, and these provisions are now applied by this section. Section 122 (7) and the Eighth Schedule to the 1947 Act, applied to that Act the provisions of the 1929 Act as amended. Subsection (2), *supra*, now has that extended application.

426. Inspection, production and evidence of documents kept by registrar.—(1) Any person may—

- (a) inspect the documents kept by the registrar of companies, on payment of such fee as may be appointed by the Board of Trade, not exceeding one shilling for each inspection ;
- (b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation and not exceeding sixpence for each folio of a certified copy or extract :

Provided that,—

- (i) in relation to documents delivered to the registrar with a prospectus in pursuance of sub-paragraph (i) of para-

graph (b) of subsection (1) of section forty-one of this Act, the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of publication of the prospectus or with the permission of the Board of Trade, and in relation to documents so delivered in pursuance of paragraph (b) of subsection (1) of section four hundred and twenty of this Act the said rights shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the Board of Trade ; and

(ii) the right conferred by paragraph (a) of this subsection shall not extend to any copy sent to the registrar under section three hundred and seventy-two of this Act of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either is or is the agent of a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by paragraph (b) of this subsection shall be similarly limited.

(2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies in England or Scotland, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) of this section to be a member or creditor of a company shall be liable to a fine not exceeding fifty pounds.

(5) In the application of this section to Scotland, as in its application to England, a folio shall be deemed to consist of seventy-two words.

NOTES

The section combines section 314 of the 1929 Act and sections 63 (6), 64 (4), 85 (6) to (8), 110 (3) of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes : Right of inspection.—(a) The right of any person to inspect or take copies of documents kept by the Registrar is limited as regards certain documents (see subsection (1) (i), *supra*) ; (b) the statement as to the affairs of a company and the comments thereon (if any), lodged with the Registrar under section 372 are privileged documents and no person will have the right to inspect or take a copy or extract thereof unless he is, or is the agent of, a member or creditor of the company to which the statement relates. The right of other persons is similarly limited (see subsection (i) (ii), *supra*). Any person falsely stating himself to be a creditor or member of a company for the purpose of inspecting the statement or taking a copy or extracts of such privileged document (but not the summary), will be liable to a fine (subsection (4) *supra*). A receiver's successor now includes a continuing receiver or manager (subsection (1), (ii)).

Power of Registrar to dispose of documents.—See section 427.

Right of inspection.—The changes effected by the 1947 Act deal with the right of inspection in the case of (a) prospectuses filed with the Registrar under sections 41 and 420 and (b) the statement submitted by a receiver under section 372. As to (a), the 1929 Act allowed any person to inspect documents kept by the Registrar on payment of certain prescribed fees and any person could take a copy or extract thereof also upon payment. The documents which now have to be filed include copies of material contracts, and so forth (see section 41 (1), 420 (2)), and while prospective subscribers to an issue have the opportunity of inspecting these documents, they are not permanently on record. The reason for this is that if they were, they might be of considerable help to competitors. Accordingly the right of inspection under subsection (1) (a), (b), *supra*, is limited in the manner indicated in the proviso to that subsection. Where inspection is

desired outside that period, permission of the Board of Trade is necessary (*ibid*). As to (b), the Act made similar provisions with respect to inspection, etc., of the receiver's statement filed with the Registrar. This right of inspection, etc., is now limited to a summary of the statement and of the receiver's comments, if any, except in the case of a member or creditor or the agent of such person (subsection (1) (b) proviso (ii)) and a penalty is now imposed for anyone untruthfully stating himself as such for the purpose of obtaining inspection of the full statement, etc., or of copies of or extracts from it (subsection (4)).

Certificate of incorporation.—See section 15.

Date of prospectus.—See section 37.

Receiver or manager.—See section 366, *et seq*.

Office for registration of companies.—See section 424.

Definitions.—"Member" (section 26); "agent", "company", "document", "prospectus", "registrar of companies", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "writing" (*ibid.*, section 20).

427. Power of registrar in England to direct removal of documents to Public Record Office.—(1) Where a company has been dissolved, whether under this Act or otherwise, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be removed to the Public Record Office, and documents in respect of which any such direction is given shall be disposed of in accordance with the provisions of the Public Record Office Acts, 1838 to 1898, and the rules made thereunder.

(2) In this section the expression "company" includes a company provisionally or completely registered under the Act 7 and 8 Victoria chapter one hundred and ten.

(3) This section shall not extend to Scotland.

NOTES

The section combines section 314 (1) of the 1929 Act and sections 82 (2) and 109 (1) of the 1947 Act. The latter provisions came into force on July 1, 1948.

Effect of changes.—The proviso to section 314 (1) of the 1929 Act, as amended *supra*, now gives the Registrar power to direct, at any time, after the expiration of 2 years from the date of a company's dissolution (*including a dissolution under earlier Acts as well as under this Act*), that any documents in his custody relating to that company may be removed to the Public Record Office for disposal in accordance with the Public Record Office Acts, 1838 to 1898 (8 Halsbury's Statutes, 200, 248). This provision, however, will not now extend to documents of and relating to Scottish companies.

Dissolution of company.—See sections 274, 290, 300, 352, 353.

Definitions.—"Company", "document", "registrar of companies" (section 455 (1)).

428. Enforcement of duty of company to make returns to registrar.—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar of companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

NOTES

The section reproduces section 315 of the 1929 Act except for a minor amendment as to the persons liable to make returns, effected by section 122 (7) of the 1947 Act and the Eighth Schedule thereto. The latter provisions, so far as they affect this section, came into force on July 1, 1948.

Effect of changes.—The persons liable to make the returns and against whom the Court may make an order for that purpose includes any “officer” of the company, that expression now being interpreted as defined in section 455 (1).

Application by a member or creditor.—The application is by summons under R.S.C., Order 53B, rule 8 (j), and should be made against the company, and in a proper case against any officer alleged to be responsible for the default. The officer may be made to pay the costs. The application may be made by any member or creditor or by the Registrar. A respondent to an originating summons under this provision must enter an appearance (*ibid.*, rule 9). The evidence must prove the default, service of the notice and default in complying with it, and, except where the applicant is the Registrar, the status of the applicant as creditor or member.

Definitions.—“Member” (section 26); “accounts”, “company”, “document” “officer”, “registrar of companies”, “the Court” (section 455 (1)).

PART XII

MISCELLANEOUS PROVISIONS WITH RESPECT TO BANKING AND INSURANCE COMPANIES, AND CERTAIN SOCIETIES, PARTNERSHIPS AND UNREGISTERED COMPANIES

Provisions relating to Banking and Insurance Companies

429. Prohibition of banking partnerships with more than ten members.—No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

NOTES

The section reproduces section 358 of the 1929 Act.

Carrying on business of banking.—A savings bank company is not necessarily a banking company within the section (*Re District Savings Bank, Ltd., Ex parte Coe* (1861), 3 De G. F. & J. 335; 3 Digest 134, 97).

Formed in pursuance of some other Act of Parliament.—These words probably mean formed and having its existence recognised by another statute (*Re Ilfracombe Permanent Mutual Benefit Building Society*, [1901] 1 Ch. 102; 9 Digest 75, 273).

Prohibition of partnership in other cases.—See section 434.

Registration under this Act.—See generally, sections 1, 12, 16.

430. On registration of banking company with limited liability, notice to be given to customers.—(1) Where a banking company which was in existence on the seventh day of August, eighteen hundred and sixty-two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

NOTES

The section reproduces section 359 of the 1929 Act.

Registration as a limited company.—See sections 1, 12 *et seq.*

Notice.—For form of notice, see *Encyclopaedia of Forms and Precedents* (2nd Edn.), Vol. 4, p. 20.

431. Liability of bank of issue unlimited in respect of notes.—

(1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes, and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited :

Provided that, if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section, the expression “ the general assets ” means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

NOTES

The section reproduces section 360 of the 1929 Act.

Registered under this Act.—See sections 1, 12, 16.

Definitions.—“ Limited company ”, “ unlimited company ” (section 1) ; member ” (section 26).

432. Privileges of banks making annual return.—(1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section one hundred and twenty-four of this Act and has added thereto a statement of the names of the several places where it carries on business, the company—

(a) shall not be required to furnish to the Commissioners of Inland Revenue any returns under the provisions of the Country Bankers Act, 1826, the Bankers (Scotland) Act, 1826, section twenty-one of the Bank Charter Act, 1844, or section thirteen of the Bank Notes (Scotland) Act, 1845 ; and

(b) shall be deemed to be a “ bank ” and “ bankers ” within the meaning of the Bankers' Books Evidence Act, 1879.

(2) The fact of the said annual return and statement having been duly forwarded may be proved in any legal proceedings by the certificate of the registrar.

NOTES

The section reproduces section 361 of the 1929 Act.

Statement of place of business.—See Board of Trade Form No. 24 (S.R. & O 1929 No. 823, Schedule, Appendix V, *post*).

Disclosure in accounts.—See Eighth Schedule, Part III.

433. Banking and certain other companies to publish periodical statement.—(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Thirteenth Schedule to this Act, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any assurance company to which the provisions of the Assurance Companies Act, 1909, as to the accounts and balance sheet to be prepared annually and deposited by such a company apply, if the company complies with those provisions.

NOTES

The section reproduces section 131 of the 1929 Act except for a minor amendment as to the persons liable for default, effected by section 105 (1) of the 1947 Act and the Fifth Schedule thereto. The latter provision came into force on July 1, 1948. The effect of the section is the same.

Limited banking company.—See section 429.

Registered office.—See section 107.

Assurance companies.—See section 456 and the Sixteenth Schedule.

Balance sheet provisions.—See the Eighth Schedule and in particular *ibid.*, Part III.

Definitions.—"Member" (section 26); "default fine", "officer who is in default" (section 440); "account", "company", "officer" (section 455 (1)).

Prohibition of Partnerships with more than twenty Members

434. Prohibition of partnerships with more than twenty members.—(1) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

(2) This section shall not apply in relation to any body of persons for the time being approved for the purposes of Part I of the War Risks Insurance Act, 1939, by the Minister of Transport, being a body the objects of which are or include the carrying on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in paragraph (b) of subsection (1) of section one of that Act.

NOTES

The section reproduces section 357 of the 1929 Act as amended by subsequent enactments.

Banking business.—See section 429.

Formed in pursuance of some other Act of Parliament.—See note to section 429.

Formed in pursuance of letters patent.—See generally, 5 Halsbury's Laws (2nd Edn.), pp. 834 *et seq.*, as to the power of the Crown to incorporate companies and the provisions of the Chartered Companies Act, 1837.

Company, association or partnership.—The terms "company" and "association" as distinguished from "partnership" probably imply a combination in which the partners can change without consent as between the partners or novation as regards the auditors (*Smith v. Anderson* (1880), 15 Ch.D. 247, C.A.; 9 Digest 72, 255). An association would imply a combination of persons to carry out a particular adventure (*ibid.*).

Carrying on a business.—This does not imply strictly a trade but rather something more extensive (*Harris v. Amery* (1865), L.R. 1 C.P. 148; 43 Digest 7, 23). A limited company formed under the laws of another country, may trade here without being incorporated according to the laws of this country (*Bateman v. Service* (1881), 6 App. Cas. 386, at p. 391; 10 Digest 1200, a).

Gain.—Cf. section 14 (1). The term means acquisition, not necessarily confined to pecuniary gain, and less still to commercial profit. An indemnity against a trading loss is gain (*Re Padstow Total Loss and Collision Assurance Association* (1882), 20 Ch.D. 137, C.A. ; 9 Digest 74, 266). An association whose objects are charitable may register under section 19.

Formed.—I.e., formed in this country. If; however, such a company is incorporated outside Great Britain, but has a place of business here, the provisions of Part X of this Act will apply. If such company has no place of business here, it cannot be wound up in this country (*Re Lloyd Generale Italiano* (1885), 29 Ch.D. 219 ; 10 Digest 1208, 8549) (see also section 399). An association of more than twenty members is illegal even though its numbers were less than twenty when formed (*Re Thomas, Ex parte Poppleton* (1884), 14 Q.B.D. 379 ; 9 Digest 73, 258). An illegal association cannot recover debts (*Jennings v. Hammond* (1882), 9 Q.B.D. 225 ; 9 Digest 75, 270), but a person embezzling money from that association can be convicted (*R. v. Tankard*, [1894] 1 Q.B.D. 548 ; 15 Digest 932, 10275), (but see also *Marrs v. Thomson* (1902), 86 L.T. 759 ; 9 Digest 76, 274). An illegal association which subsequently becomes legal may sue for a debt in certain cases (*Re Thomas, Ex parte Poppleton, supra*).

Part I of War Risks Insurance Act, 1939.—See *ibid.*, section 5 (32 Halsbury's Statutes 918).

Application of certain Provisions of this Act to Unregistered Companies

435. Application of certain provisions of this Act to unregistered companies.—(1) The provisions of this Act specified in the second column of the Fourteenth Schedule to this Act (which respectively relate to the matters referred to in the first column of that Schedule) shall apply to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than those mentioned in the next following subsection, as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column of that Schedule and to such adaptations and modifications (if any) as may be specified by regulations made by the Board of Trade.

(2) The said provisions shall not apply by virtue of this section to any of the following, that is to say :—

- (a) any body incorporated by or registered under any public general Act of Parliament ; and
- (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or by the individual members thereof ; and
- (c) any body for the time being exempted by direction of the Board of Trade.

(3) The said provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act, 1837, and not registered under any other public general Act of Parliament, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (b) and (c) of the last foregoing subsection.

(4) This section shall not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this section, or restrict the power of His Majesty to grant a charter in lieu of or supplementary to any such charter as aforesaid ; but, in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

(5) The powers to make regulations conferred by this section and the Fourteenth Schedule to this Act on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of resolution of either House of Parliament.

NOTES

The section substantially reproduces section 108 of the 1947 Act, which came into force on July 1, 1948.

The section applies certain provisions of this Act to unregistered companies, that is, to all bodies corporate which are incorporated in and have a principal place of business in Great Britain, and to unincorporated bodies entitled by letters patent to any of the privileges conferred by the Chartered Companies Act, 1837, except those incorporated by or registered under a public general Act of Parliament, or which is non-profit making or is exempted by the Board of Trade.

These provisions do not repeal or revoke any enactment, royal charter or other instrument constituting or regulating any such body, neither do they restrict the power of the King to grant a charter in lieu or supplementary to any previous charter. Where, however, anything in the enactment, charter, etc., is inconsistent with these provisions, these provisions will prevail. For the provisions of the Chartered Companies Act, 1837, see 5 Halsbury's Laws (2nd Edn.), pp. 834 to 840. As to unregistered companies generally, see *ibid.*, pp. 816 *et seq.*

Regulations.—See Companies (Unregistered Companies) Regulations, 1948 (S.I. 1948 No. 1398), Appendix III, *post*, made under the 1947 Act, s. 108.

Statutory instrument.—See the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 783).

PART XIII

GENERAL

Form of Registers, etc.

436. Form of registers, etc.—(1) Any register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds and further shall be liable to a default fine.

NOTES

The section reproduces section 119 of the 1947 Act, which came into force on July 1, 1948.

The effect of the section is that loose-leaf records and other accounts, records, etc., of the company not kept in a bound book may be kept as valid books of account, etc., provided adequate precautions are taken for guarding against falsification and for facilitating its discovery. Under the 1929 Act it was doubtful whether the keeping of loose-leaf records constituted a compliance with the requirements of that Act. This section, however, removes that doubt subject to reasonable safeguards being employed. Thus, loose-leaf account books kept under a mechanical book-keeping system come within the terms of this section so as to be books of account of the company provided the necessary safeguards are taken.

Register.—For examples of registers to be kept under this Act, see sections 95 (register of charges), 110 (register of members), 119 (dominion register), 195 (register of directors' shareholdings), 200 (register of directors and secretaries).

Index.—See section 111 (index of members).

Minutes.—See section 145 (minutes of proceedings).

Book of account.—See sections 147 (keeping of proper books of account), 340 (books as evidence). See also section 331.

Definitions.—"Default fine", "officer who is in default" (section 440); "accounts", "book and/or paper", "company", "officer" (section 455 (1)).

Service of Documents

437. Service of documents on a company.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

(2) Where a company registered in Scotland carries on business in England, the process of any court in England may be served on the company

by leaving it at or by sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.

(3) Where process is served on a company by subsection (2) of this section the person issuing out the process shall send a copy thereof by post to the registered office of the company.

NOTES

The section reproduces section 370 of the 1929 Act. Cf. R.S.C. Order 9 rule 8.

Registered office.—See section 107.

Service by post.—Service is deemed to be effected by properly addressing, prepaying, and posting a letter containing the process and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post (Interpretation Act, 1889, section 26; 18 Halsbury's Statutes 1002).

Carrying on business.—See note to section 407. An appearance to a writ served on the officer of a branch of a company is valid, and a letter stating that the appearance is only for the branch is of no effect (*Leader, Plunkett and Leader v. Direction der Disconto-Gesellschaft* (1914), 31 T.L.R. 83; 13 Digest 432, 1548).

For consideration of the tests to be applied as to whether a company carries on business in England, see *The Lalandia*, [1933] P. 56; Digest Supp. Where a board of directors of a company engage in raising money in England by an issue of debentures to finance its trading operations, the company is carrying on business in England (*Act. Dampskib Hercules v. Grand Trunk Pacific Rail. Co.*, [1912] 1 K.B. 222, C.A.; 13 Digest 432, 1546).

Definitions.—"Company", "document", "officer" (section 455 (1)).

Offences

438. Penalty for false statements.—If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifteenth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction in Scotland on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and be liable on summary conviction in England or Scotland to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that—

- (a) the fine imposed on summary conviction shall not exceed one hundred pounds;
- (b) nothing in this section shall affect the provisions of the Perjury Act, 1911, or the False Oaths (Scotland) Act, 1933.

NOTES

The section reproduces section 362 of the 1929 Act, as applied to the provisions of the 1947 Act by sections 22 (1), 55 (2), 67 (7), 84 (7), and 112 (3) of the latter Act. The last-mentioned provisions came into force on July 1, 1948. The section also adds a saving for the provisions of the False Oaths (Scotland) Act, 1933.

Effect of changes.—The above-mentioned sections of the 1947 Act introduced new requirements with regard to accounts, prospectuses, etc., and the provisions of section 362 of the 1929 Act were extended so as to impose the penalties provided by the section for false statements in the documents required for the purposes of those sections. These provisions relate to (i) the auditor's report (see section 162); (ii) the signature of the annual return, etc. (see sections 127, 128); (iii) statement in lieu of prospectus (see sections 30, 48); (iv) information in cases where a receiver or manager is appointed under section 372; (v) accounts of overseas companies (see section 410). These provisions are now added to those specified in the Fifteenth Schedule (which corresponds with the Eleventh Schedule to the 1929 Act).

False Oaths (Scotland) Act, 1933.—This Act makes it an offence (*inter alia*) to make false statements in statutory returns, and corresponds to some extent with the Perjury Act, 1911 (4 Halsbury's Statutes 772), in England. This statutory provision did not exist in Scotland at the time when the 1929 Act was passed and so no saving clause was required in section 362 of that Act, as was necessary in the case

of the Perjury Act, 1911 (4 Halsbury's Statutes 772). In re-enacting the section in the present Act, it was therefore necessary expressly to save the provisions of the Scottish Act, as well as those of the English Act.

Definitions.—"Document" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

439. Penalty for improper use of word "limited."—If any person or persons trade or carry on business under any name or title of which "limited," or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

NOTE

The section reproduces section 364 of the 1929 Act.

440. Provision with respect to default fines and meaning of "officer in default."—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

NOTES

The section reproduces section 365 of the 1929 Act, with a minor drafting amendment substituting the general word "officer" for the words "director, manager, secretary or other officer" in subsection (2), effected by section 122 (4) and the Seventh Schedule to the 1947 Act, and as extended to apply to the provisions of the latter Act by *ibid.*, 122 (7) and the Eighth Schedule. These provisions of the 1947 Act, so far as they concern this section, came into force on July 1, 1948.

Officer who is in default.—See also *Beck v. Board of Trade Solicitor* (1932), 76 Sol. Jo. 414; Digest Supp.

441. Production and inspection of books where offence suspected.—(1) If on an application made—

(a) in England, to a judge of the High Court in chambers by the Director of Public Prosecutions, the Board of Trade or a chief officer of police; or

(b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;

there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(ii) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) The foregoing subsection shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (ii) thereof shall be made by virtue of this subsection.

(3) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section shall not be appealable.

(4) In this section the expression "chief officer of police" has (subject to the provisions of the Police Act, 1946, and the Police (Scotland) Act, 1946) the same meaning as in the Police Pensions Act, 1921.

NOTES

The section reproduces section 102 of the 1947 Act, which came into force on July 1, 1948.

General note.—The power to inspect books of companies in connection with the management of which an offence is suspected to have been committed is strengthened by this section. Where such an offence is reasonably suspected and it is thought that evidence thereof is to be found in any books or papers of or under the control of the company, an application may be made by (a) the Director of Public Prosecution, the Board of Trade, or a chief officer of police in England, or (b) by the Lord Advocate in Scotland, to a Judge in Chambers (or, in Scotland, to a Lord Commissioner of Justiciary) for an order authorising any person named therein to inspect any or all of such books and papers for the purpose of obtaining such evidence or requiring the secretary or other named officer to produce all or any of them to the persons named in the order. An order may also be obtained to investigate all bankers' books and papers so far as they relate to the company's affairs. The decision on any such application is final. The application is by summons (R.S.C. Order 53B, r. 8 (r); S.I. 1948, No. 1756).

Chief officer of police.—This expression is defined in the Police Pensions Act, 1921 (12 Halsbury's Statutes 873), as being, in the case of the City of London, the Commissioner of City of London Police, in the Metropolitan Police District, the Commissioner of the police of the metropolis, in the Tyne area, the superintendent or other officer having the chief command of the police in that area, and in a county or borough, the chief constable (Police Pensions Act, 1921, Third Schedule, Part I, col. 3; 12 Halsbury's Statutes 894). In the case of Scotland, it means the chief constable of a county or burgh (*ibid.*, Part II, col. 3). The Police Act, 1946 (39 Halsbury's Statutes 616), and the Police (Scotland) Act, 1946, provide for the amalgamation of certain police areas, and, where such an amalgamation has taken place, the reference to the chief constable of a county in any enactment relating to the county police in its application to such combined area is to be read as a reference to the chief constable of the combined area (or in Scotland, of the combined force (Police Act, 1946, Second Schedule (39 Halsbury's Statutes 634); Police (Scotland) Act, 1946, First Schedule).

Definitions.—"Book and/or paper", "company", "officer" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

442. Provisions as to summary proceedings.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts, and proceedings under those Acts in respect of any such offence may, notwithstanding anything to the contrary therein, be taken by the Director of Public Prosecutions or by the Board of Trade at any time within twelve months from the date on which evidence sufficient in the opinion of the Director or the Board, as the case may be, to justify the proceedings comes to his or their knowledge:

Provided that proceedings shall not be so taken more than three years after the commission of the offence.

(2) For the purposes of the foregoing subsection, a certificate of the Director of Public Prosecutions or the Board of Trade as to the date on which such evidence as aforesaid came to his or their knowledge shall be conclusive evidence thereof.

(3) In the application of this section to Scotland, any reference to the Director of Public Prosecutions and the first reference to the Board of Trade shall be omitted, and for any reference to evidence sufficient to justify proceedings there shall be substituted a reference to evidence sufficient

to justify a report to the Lord Advocate with a view to consideration of the question of proceedings

(4) Subsection (1) of this section, so far as it relates to the time within which proceedings may be taken, and subsections (2) and (3) thereof shall apply to proceedings in respect of offences under the Companies Act, 1929, or the Companies Act, 1947, that may be prosecuted under the Summary Jurisdiction Acts as it applies to proceedings in respect of the offences mentioned in the said subsection (1) :

Provided that this subsection shall not have effect in relation to any proceedings if the time allowed under the said Acts apart from this section for taking them had already expired before the commencement of this Act.

NOTES

The section combines sections 366 of the 1929 Act and section 104 of the 1947 Act, as applied to the latter Act by *ibid.*, section 122 (7) and the Seventh Schedule. The last-mentioned provision came into force on December 1, 1947, and section 104 of the 1947 Act came into force on July 1, 1948.

The section amplifies the provision of section 366 of the 1929 Act that all offences made punishable by a fine under the Act may be prosecuted under the Summary Jurisdiction Acts. It is now provided that summary proceedings in respect of any offence under the Act may be taken at any time within twelve months from the date on which evidence sufficient, in England, in the opinion of the Director of Public Prosecutions or the Board of Trade to justify proceedings, or in Scotland, to justify a report to the Lord Advocate with a view to consideration of the question of proceedings, comes to the knowledge of the relevant department. In England, the proceedings may be instituted by the Director of Public Prosecutions or by the Board of Trade, but may not, in England or Scotland, be taken more than three years after the commission of the offence. A certificate of the Director or Board as to the date on which sufficient evidence came to their knowledge is conclusive evidence of the fact. In the case of offences committed before July 1, 1948, if the offence was committed six months or more before that date and the time limit for summary proceedings under the Summary Jurisdiction Acts had therefore already expired, the extended time limit provided by the section will not apply. If it was committed less than six months before July 1, 1948, the extended time limit applies and summary proceedings may be brought within three years of the commission of the offence or twelve months from the date that evidence sufficient to justify the prosecution is available, whichever date is the earlier. A similar provision already exists in section 164 (2) of the Bankruptcy Act, 1914 (1 Halsbury's Statutes 703).

Proceedings under the Summary Jurisdiction Acts.—The Summary Jurisdiction Act, 1848 (11 Halsbury's Statutes 270), imposes a limitation of six months from the date of commission of the offence after which summary proceedings cannot be brought. This does not prevent proceedings being brought on indictment, in the case of an indictable offence. On a summons for default in making annual returns a Court of Summary Jurisdiction is not bound to accept the register as conclusive, but should accept it as correct unless it is clearly proved that the entries and the returns based on them are so false and misleading as not to be a compliance with the Act (*Re Briton Medical and General Life Association* (1888), 39 Ch.D. 61; 9 Digest 584, 3912). If the Court exceeds its jurisdiction, prohibition will lie (*ibid.*, at p. 64).

Director of Public Prosecution or the Board of Trade.—This does not apply to Scotland (see subsection (3), *supra*).

More than three years after commission of offence.—Cf. the Bankruptcy Act, 1914, section 164 (2) (1 Halsbury's Statutes 703). This is the upper limit within which proceedings must be taken, provided sufficient evidence was not available earlier.

443. Proceedings on indictment in Scotland against bodies corporate.—(1) In any proceedings on indictment against a body corporate for an offence against this Act the indictment may be served by—

- (a) delivery of a copy with notice to appear attached thereto at the registered office or, if there is no registered office, at the principal place of business of the body corporate; and
- (b) delivery in Scotland of a copy of the indictment with notice to appear attached thereto to the secretary or any director or to any person in charge of any principal place of business of the body corporate.

Where a registered letter containing a copy of the indictment has been sent by post to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Postmaster General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

(2) In any such proceedings as aforesaid the body corporate may appear, and any plea or notice on behalf of the body may be tendered or given—

- (a) in the High Court of Justiciary by counsel or by a representative of the body corporate ; and
- (b) in the sheriff court by counsel or by a solicitor or by a representative of the body corporate.

(3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, it shall be deemed to have tendered a plea of not guilty.

(4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.

(6) Notwithstanding anything contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, it shall not be necessary for a plea tendered by counsel or by a solicitor in accordance with the provisions of subsection (2) of this section to be signed.

(7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

(8) In this section, the expression " representative " in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of, the body corporate to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

(9) The foregoing provisions of this section shall apply to offences against the Companies Act, 1929, or the Companies Act, 1947, as they apply to offences against this Act.

(10) This section shall extend to Scotland only.

NOTES

The section substantially reproduces section 103 of the 1947 Act, which came into force on July 1, 1948.

General note.—The section reproduces almost verbatim Regulation 93A of the Defence (General) Regulations, 1939. This regulation was substituted by S.R. & O. 1941, No. 1981, for the former Regulation 93A, which was added to the Defence (General) Regulations by S.R. & O. 1940 No. 290, and which applied the provisions of Regulation 93 to summary proceedings in Scotland against persons in the Forces. The regulation was, of course, of purely temporary application and its provisions are now made permanent by this section, which provides that, on proceedings on indictment in Scotland against a company for any offence under the Act, the indictment may be served by delivery of a copy thereof with notice to appear thereto at the registered office (if any) or otherwise at the principal place of business of the company. An acknowledgment or certificate of delivery of a registered letter containing the copy will be sufficient evidence of delivery on the date specified therein.

The company may appear by counsel or by a representative of the company (defined in subsection (8), *supra*), or (in the sheriff court) by solicitor, and if at the first diet the company does not so appear or tender any plea, it will be deemed to have pleaded not guilty.

At the second diet, if the company does not appear and the Court is satisfied that the indictment has been properly served, it may proceed to hear and dispose of the case.

Where, on such proceedings, the company is sentenced to a fine, it may be recovered as if the sentence of the Court were a decree of the Court of Session. A plea tendered on behalf of the company by counsel or solicitor need not be signed and the sheriff may grant a warrant for the citation of witnesses and the production of documents and articles on the application of the procurator fiscal, if he is satisfied that there is reasonable suspicion that an offence against the Act has been committed.

Delivery of notice.—See generally, as to service of documents, section 437.

Registered office.—See section 107.

Definitions.—"Director", "document", "officer", "the Court" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "writing" (*ibid.*, section 20).

444. Application of fines.—The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

NOTES

The section reproduces section 367 of the 1929 Act, as applied to the provisions of the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule. In their application to the present section, the last-mentioned provisions came into force on December 1, 1947.

445. Saving as to private prosecutors.—Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

NOTES

The section reproduces section 368 of the 1929 Act, as applied to the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule. In their application to the present section, the last-mentioned provisions came into force on July 1, 1948.

446. Saving for privileged communications.—Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

NOTE

The section reproduces section 369 of the 1929 Act.

Legal Proceedings

447. Costs in actions by certain limited companies.—Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

NOTES

The section reproduces section 371 of the 1929 Act.

Action by company.—Where a company successfully brought an action as plaintiff and the defendant appealed, the company was not ordered to give security (*Star Fire and Burglary Insurance Co. v. Davidson & Sons* (1902), 4 F. (Ct. of Sess.) 997; 9 Digest 664, d).

Application of section.—The section applies to limited companies only. It does not apply to an unlimited company, even if it is in winding up (*United Ports Insurance Co. v. Hill* (1870), L.R. 5 Q.B. 395; 9 Digest 684, 4566).

Security.—If the case is remitted to the County Court, the County Court Judge has power to order security (*Plasycod Collieries Co., Ltd. v. Partridge, Jones & Co., Ltd.* (1911), 104 L.T. 807; 9 Digest 682, 4553). Security cannot be ordered to be given by a liquidator (*Re Strand Wool Co., Ltd.*, [1904] 2 Ch. 1, C.A.; 9 Digest 684, 4567) but he may, in some circumstances, be made to pay costs personally (*Re Powell (W.) & Sons*, [1896] 1 Ch. 681; 9 Digest 908, 6201). The fact that the company is in liquidation is *prima facie* evidence that it will, if unsuccessful, be unable to pay the defendant's costs (*Northampton Coal, Iron and Waggon Co. v. Midland Waggon Co.* (1878), 7 Ch.D. 500, C.A.; 9 Digest 682, 4551). A defendant company is not obliged to give security (*Accidental and Marine Insurance Co. v. Mercati* (1866), L.R. 3 Eq. 200; 9 Digest 682, 4554), but if there is a counterclaim or cross-action, security may be ordered (*Strong v. Carlyle Press* (1893), 37 Sol. Jo. 357; 9 Digest 683, 4564). The amount of security required should equal the amount of costs payable (*Imperial Bank of China, India and Japan v. Bank of Hindustan, China and Japan* (1866), 1 Ch. App. 437; 9 Digest 683, 4557), but the Court has an absolute discretion as to the amount of the security, and as to when and in what manner and form it is to be given (R.S.C., Order 65, rule 6). Where a company appeals from a winding-up order, security for costs may be required (*Re Diamond Fuel Co.* (1879), 13 Ch.D. 400, C.A.; 10 Digest 825, 5377).

Definitions.—"Limited company" (section 1); "company" (section 455 (1)).

448. Power of court to grant relief in certain cases.—(1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the

jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

NOTES

The section corresponds with section 372 of the 1929 Act, with a minor drafting amendment as to the persons to whom the section applies effected by section 122 (4) and the Seventh Schedule to the 1947 Act. The last-mentioned provisions came into force on July 1, 1948.

General note.—The section enables relief from liability for negligence, etc., to be granted to officers and auditors of a company where such persons have acted honestly and reasonably and in the circumstances of the case ought fairly to be excused. Such relief may be granted on application to the Court by the person concerned. In view of the extended meaning of the term "officer" given in section 455 (1), the specific reference to directors and managers in section 372 of the 1929 Act has been omitted from this section. Directors and managers, as officers of the company, can, of course, still obtain relief under the section.

Power to grant relief.—This provision for relief was originally taken from the Judicial Trustee Act, 1896, section 3 (now Trustee Act, 1925, section 61; 20 Halsbury's Statutes 151). Where, as is usually the case, the director is paid for his services, the Court is less disposed to grant relief than it would to a person acting gratuitously (*National Trustees Co. of Australasia v. General Finance Co. of Australasia*, [1905] A.C. 373, at p. 381, P.C.; 43 Digest 994, 4360). The section includes power to relieve a director from the penalties imposed by section 182 (5) where he has acted without obtaining the required qualification shares (*Re Barry and Staines Linoleum, Ltd.*, [1934] Ch. 227; Digest Supp.), or after ceasing to hold such shares (*Re Gilt Edge Safety Glass, Ltd.*, [1940] Ch. 495; [1940] 2 All E.R. 237; 2nd Digest Supp.). The Court may give relief where there was a merely technical defect, but the circumstances of the case may prevent such relief (*Re Franklin (J.) & Son, Ltd.*, [1937] 4 All E.R. 43; Digest Supp.). A director may be relieved against liability in respect of a transaction wholly *ultra vires* the company (*Re Claridge's Patent Asphalte Co., Ltd.*, [1921] 1 Ch. 543; 9 Digest 511, 3345).

Subsection (2).—The discretion of the Court under this subsection as distinct from under subsection (1), *supra*, is concerned, not with pending, but only with future proceedings (*Re Gilt Edge Safety Glass, Ltd.*, *supra*).

Application to the Court.—The application is made by way of petition under R.S.C., Order 53B, rule 5 (j), unless made in a winding up, when it is by summons (see Companies (Winding-up) Rules 1929, rule 66 (1)).

Auditor.—See sections 160 to 162.

Definitions.—"Company", "officer", "the Court" (section 455 (1)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

449. Power to enforce orders.—Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

NOTES

The section reproduces section 373 of the 1929 Act, as applied to the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule. In their application to the present section, the last-mentioned provisions came into force on December 1, 1947.

Cf. R.S.C., Order 42, rule 24, and the Companies (Winding-up) Rules, 1929, rule 24.

450. Jurisdiction of stannaries court.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent or servant thereof, may be served in any part of England without any special order

of the judge for that purpose, or by such special order may be served in any part of the British Islands other than Eire, on such terms and conditions as the court may think fit :

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

NOTES

The sect on substantially reproduces section 375 of the 1929 Act, as extended to the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule, which, in its application to this section, came into force on December 1, 1947. The section also incorporates a minor drafting amendment effected by section 122 (4) and the Seventh Schedule to the 1947 Act, omitting the reference in the corresponding section of the 1929 Act to directors and managers in subsection (2). These terms are now included in the term " officer " in view of the extended meaning given to that term in section 455 (1). The provisions of the 1947 Act last-mentioned came into force on July 1, 1948.

Court of the Vice-Warden of the stannaries.—This Court exercised equitable jurisdiction in cases where tin or matters connected with tin in Cornwall were concerned. The Steward's Court exercised common law jurisdiction in such cases. The Stannaries Act, 1836 (3 Halsbury's Statutes 822), vested both the equitable and common law jurisdiction in the Vice-Warden's Court, and it was provided that the vice-wardens might exercise and enjoy the same power and authority in all matters relating to the working, managing, conducting, or carrying on any mine worked for any lead, copper, or other metal or metallic mineral within the county of Cornwall, or to the searching for, working, smelting, or purifying the same within that county. By the Stannaries Court (Abolition) Act, 1896 (4 Halsbury's Statutes 137), the jurisdiction and powers of the Court and its officers were transferred to the county courts of Cornwall.

Companies within the stannaries.—See generally, 5 Halsbury's Laws (2nd Edn.), pp. 822 *et seq.* See also sections 218 (4) (winding-up jurisdiction), 357-359 (special provisions in winding up).

Definitions.—" Member " (section 26) ; " contributory " (section 213) ; " agent ", " company ", " company within the stannaries ", " officer ", " prescribed " (section 455 (1)).

General Provisions as to Board of Trade

451. Annual report by Board of Trade.—The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

NOTES

The section reproduces section 376 of the 1929 Act, as applied to the provisions of the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule. These last provisions, in their application to this section, came into force on December 1, 1947.

Statements in annual report.—An action for defamation will not lie against an officer of the Board in respect of statements contained in a report prepared by him for and delivered to the Board in the performance of his duties for the purpose of its being laid before Parliament as part of the Board's annual report (*Burr v. Smith*, [1909] 2 K.B. 306, C.A. ; 10 Digest 869, 5885).

452. Authentication of documents issued by Board of Trade.—Any approval, sanction or licence or revocation of licence which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

NOTE

The section reproduces section 377 of the 1929 Act, as applied to the provisions of the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule, which, in their application to the present section, came into force on December 1, 1947.

453. Orders and certificates of Board to be evidence.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued or act done is the order, certificate or act of the Board shall be conclusive evidence of the fact so certified.

NOTE

The section reproduces section 378 of the 1929 Act, as applied to the provisions of the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule, which, in their application to the present section, came into force on December 1, 1947.

454. Power to alter tables and forms.—(1) The Board of Trade shall have power by regulations made by statutory instrument to alter or add to the requirements of this Act as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts, and in particular of those of the Eighth Schedule to this Act; and any reference in this Act to the said Eighth Schedule shall be construed as a reference to that Schedule with any alterations or additions made by regulations for the time being in force under this subsection.

(2) The Board of Trade may by regulations made by statutory instrument—

(a) alter Table A, the Twelfth Schedule to this Act so that it does not increase the amount of fees payable to the registrar under that Schedule, and the form in the Thirteenth Schedule to this Act; and

(b) alter or add to Tables B, C, D, and E in the First Schedule to this Act and the forms in the Second Schedule and Part II of the Sixth Schedule to this Act;

but no alteration made by the Board of Trade in Table A shall affect any company registered before the alteration, or repeal as respects that company any portion of that Table.

(3) No regulations shall be made under subsection (1) of this section so as to render more onerous the requirements therein referred to, unless a draft of the instrument containing the regulations has been laid before Parliament and has been approved by resolution of each House of Parliament.

(4) A statutory instrument containing regulations made under this section, not being regulations to which the last foregoing section applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

The section combines section 379 of the 1929 Act and sections 120 (1), (2) and 121 (1) of the 1947 Act. The last-mentioned provisions came into force on July 1, 1948, except for section 120 (2) (see subsection (2), *supra*), which came into force on March 2, 1948; see S.I. 1948 No. 439.

Effect of changes.—The main point of difference between the present section and the corresponding provision of the 1929 Act is that, whereas under the former Act, alterations took effect only after publication in the Gazette, they now take effect on the making of the necessary regulations and publication in the Gazette is no longer required. Incidental changes are the power to alter the requirements of the Act in regard to accounts and the provisions of the Eighth Schedule (which corresponds with the First Schedule to the 1947 Act), as well as the provision, consequent on the coming into operation of the Statutory Instruments Act, 1946, that regulations under the section shall be made by statutory instrument.

Statutory instrument.—See the Statutory Instruments Act, 1946, sections 1 (2), 4 (3), 5 (2), and 6 (2) (39, Halsbury's Statutes 784, 786, 787).

Supplemental

455. Interpretation.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say) :—

- “ accounts ” includes a company’s group accounts, whether prepared in the form of accounts or not ;
- “ agent ” does not include a person’s counsel acting as such ;
- “ annual return ” means the return required to be made, in the case of a company having a share capital, under section one hundred and twenty-four, and, in the case of a company not having a share capital, under section one hundred and twenty-five, of this Act ;
- “ articles ” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of the last-mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or in that Table as altered in pursuance of section one hundred and eighteen of the last-mentioned Act, or in Table A in the First Schedule to the Companies Act, 1929, or in Table A in the First Schedule to this Act ;
- “ bank holiday ” means a day which is a bank holiday under the Bank Holidays Act, 1871 ;
- “ book and paper ” and “ book or paper ” include accounts, deeds, writings, and documents ;
- “ company ” means a company formed and registered under this Act or an existing company ;
- “ company limited by guarantee ” and “ company limited by shares ” have the meanings assigned to them respectively by subsection (2) of section one of this Act ;
- “ company within the stannaries ” means a company engaged in or formed for working mines within the stannaries ;
- “ contributory ” has the meaning assigned to it by section two hundred and thirteen of this Act ;
- “ the court ” used in relation to a company means the court having jurisdiction to wind up the company ;
- “ the court exercising the stannaries jurisdiction ” used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested ;
- “ creditors’ voluntary winding up ” has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act ;
- “ debenture ” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not ;
- “ director ” includes any person occupying the position of director by whatever name called ;
- “ document ” includes summons, notice, order, and other legal process, and registers ;
- “ dominion register ” has the meaning assigned to it by subsection (1) of section one hundred and nineteen of this Act ;
- “ exempt private company ” means an exempt private company as defined by subsection (4) of section one hundred and twenty-nine of this Act ;
- “ existing company ” means a company formed and registered under

the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, but does not include a company registered under the said Acts, the said Act of 1862 or the said Act of 1908 in Northern Ireland or Eire ;

“ financial year ” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not ;

“ the Gazette ” means, as respects companies registered in England, the London Gazette and as respects companies registered in Scotland, the Edinburgh Gazette ;

“ general rules ” means general rules made under section three hundred and sixty-five of this Act, and includes forms ;

“ group accounts ” has the meaning assigned to it by subsection (1) of section one hundred and fifty, of this Act ;

“ holding company ” means a holding company as defined by section one hundred and fifty-four of this Act ;

“ issued generally ” means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company ;

“ Joint Stock Companies Acts ” means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require, but does not include the Act 7 and 8 Victoria, chapter one hundred and ten ;

“ members’ voluntary winding up ” has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act ;

“ the minimum subscription ” has the meaning assigned to it by subsection (2) of section forty-seven of this Act ;

“ memorandum ” means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment ;

“ officer ”, in relation to a body corporate, includes a director, manager or secretary ;

“ prescribed ” means as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by statutory instrument made by the Board of Trade ;

“ private company ” has the meaning assigned to it by subsection (1) of section twenty-eight of this Act ;

“ prospectus ” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company ;

“ real ” and “ personal ”, as respects Scotland, mean respectively heritable and moveable ;

“ recognised stock exchange ” means any body of persons which is for the time being a recognised stock exchange for the purposes of the Prevention of Fraud (Investments) Act, 1939 ;

“ the registrar of companies ”, or when used in relation to registration of companies, “ the registrar ”, means the registrar or other officer performing under this Act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires ;

“ resolution for reducing share capital ” has the meaning assigned to it by subsection (2) of section sixty-six of this Act ;

“ a resolution for voluntary winding up ” has the meaning assigned to it by subsection (2) of section two hundred and seventy-eight of this Act ;

- “share” means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied ;
- “share warrant” has the meaning assigned to it by subsection (2) of section eighty-three of this Act ;
- “statutory meeting” means the meeting required to be held by subsection (1) of section one hundred and thirty of this Act ;
- “statutory report” has the meaning assigned to it by subsection (2) of section one hundred and thirty of this Act ;
- “subsidiary” means a subsidiary as defined by section one hundred and fifty-four of this Act ;
- “Table A” means Table A in the First Schedule to this Act ;
- “the time of the opening of the subscription lists” has the meaning assigned to it by subsection (1) of section fifty of this Act ;
- “unlimited company” has the meaning assigned to it by subsection (2) of section one of this Act.

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Great Britain, and references therein to a body corporate shall be construed as not including a Scottish firm.

(4) Any such provision of this Act overriding or interpreting a company's articles as is a re-enacted provision of the Companies Act, 1947, shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

NOTES

The section combines section 380 of the 1929 Act and section 122 (1) to (6) of the 1947 Act. The last-mentioned provisions, so far as they affect the present section, came into force on July 1, 1948.

Agent.—See, in particular, section 173 (1) (b), and cf. section 175 (a). The effect of this definition is to make it unnecessary in section 175 to preserve expressly privilege in respect of communications from lay client or solicitor to counsel.

Bank holiday.—The Bank Holidays Act, 1871, defines “bank holiday” as (in England and Ireland) Easter Monday, the Monday in Whitsun week, the first Monday of August and the 26th December, if a weekday. Bank holidays in Scotland are New Year's Day, Christmas Day (if either day falls on Sunday, the next following Monday is bank holiday), Good Friday, the first Monday in May and the first Monday in August (*ibid.*, section 1 and Schedule ; 19 Halsbury's Statutes 417, 418).

Debenture.—A mortgage is a “debenture” within this provision (*Knightsbridge Estates Trust, Ltd. v. Byrne*, [1940] A.C. 613). So is a transferable “founder's unit guarantee certificate” issued in respect of loans to a company (*R. v. Findlater*, [1939] 1 K.B. 594).

Recognised Stock Exchange.—The Prevention of Fraud (Investments) Act, 1939, section 26 (1) defines this term as “the Stock Exchange, London, or a body of persons declared by an order of the Board of Trade for the time being in force to be a recognised stock exchange for the purposes of this Act”.

456. Amendments of other Acts.—The Assurance Companies Acts, 1909 to 1946, sections two and thirteen of the Prevention of Fraud (Investments) Act, 1939, and sections fifty-eight, one hundred and fifteen and one hundred and seventeen of the Companies Act, 1947, shall have effect subject to the amendments specified in the Sixteenth Schedule to this Act.

NOTES

The section effects the necessary drafting amendments required to preserve, within the framework of the present Act, those provisions of the 1947 Act which continue in force independently of the present Act.

To that extent, the section corresponds with section 118 of the 1947 Act, which effected certain amendments in the first two enactments here specified. That section of the 1947 Act, so far as it affects the provisions of the Assurance Companies Acts, 1909 to 1946, came into force on December 1, 1947, and as to the rest, on July 1, 1948. As to the amendments effected, see the Sixteenth Schedule.

457. Construction of references in other Acts to subsidiary companies as defined by, and companies registered under, the Companies Act, 1929.—Notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889 (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted),—

- (a) references, in whatever terms, in any Act other than this Act to a subsidiary company as defined by the Companies Act, 1929, shall be construed in like manner as if this Act had not passed ;
- (b) references in any Act other than this Act to a company formed and registered, or registered, under the Companies Act, 1929, shall, unless the context otherwise requires, be construed as references to a company formed and registered, or registered, under that Act or this Act.

NOTES

The section corresponds with section 118 (2) of the 1947 Act, which came into force on July 1, 1947.

The section is necessary, in order to preserve the intended effect of section 38 of the Interpretation Act, 1889 (18 Halsbury's Statutes 1005), on those provisions of the 1947 Act which remain in force independently of the present Act.

458. Effect of provisions of former Companies Acts as to registration of charges on land and keeping books of account.—

(1) Paragraph (d) of subsection (1) of section ten of the Companies Act, 1907, paragraph (d) of subsection (1) of section ninety-three of the Companies (Consolidation) Act, 1908, and paragraph (d) of subsection (2) of section seventy-nine of the Companies Act, 1929 (by virtue whereof charges created on land by a company required registration under those Acts respectively), shall be deemed never to have applied to a charge for any rent or other periodical sum issuing out of the land.

(2) Subsection (1) of section two hundred and seventy-four of the Companies Act, 1929 (which penalised the persons responsible where proper books of account are not kept by a company throughout the two years immediately preceding the commencement of the winding up) shall be deemed always to have had effect—

- (a) as if after the words “ the period of two years immediately preceding the commencement of the winding up ” there had been inserted the words “ or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter ” ; and
- (b) as if, in the phrase “ unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable ”, for the word “ or ” there had been substituted the word “ and ”.

NOTES

The section combines sections 89 (1) and 101 (3) of the 1947 Act, which came into force on July 1, 1948.

The section effects certain minor changes in provisions of former Acts so far as those provisions still apply. Subsection (1) deals with registration of charges on land, and subsection (2) with penalties for not keeping proper books of account.

Effect of changes.—(i) *Registration of charges.* Section 79 (2) (d) of the 1929 Act (now replaced by section 95 (2) (d)) does not apply, and is deemed never to have applied, to any rentcharge or a charge for any periodic sum issuing out of the land. This is also deemed never to have applied in the case of the corresponding provisions of the 1907 and 1908 Acts. (ii) *Penalties for not keeping proper books of account.* A drafting error in section 274 (1) of the 1929 Act is corrected. That subsection relieved an officer of the company from liability under that section if he showed that he acted honestly *or* that in the circumstances in which the business of the company was carried on the default was excusable. It was always intended that both factors should be present in order to afford a good defence and this is now made clear by substituting the word "and" for "or". This error has now been corrected in the corresponding provision of this Act (see section 331 (1)).

Section 79 (2) (d) of the 1929 Act.—See section 95.

Section 10 (1) (a) of the 1907 Act ; section 93 (1) (d) of the 1908 Act.—The provision of the 1907 Act here mentioned extended the provisions of section 14 of the 1900 Act with regard to the registration of charges and included for the first time (*inter alia*) charges on land. These were re-enacted by the above provision of the 1908 Act, and extended to certain other matters by the 1929 Act. The provisions of the 1907 and 1908 Acts are still applicable to certain transactions, and it was therefore necessary to include the references to those Acts, in order to make it clear that the same interpretation is to be applied to the term "charge on land" in those Acts as it is applied to the same expression in section 95, and to the corresponding provision of the 1929 Act.

Subsection (2) (a).—This paragraph amends section 274 (1) of the 1929 Act in the same terms as it has been amended in the corresponding provision of this Act (section 331).

Commencement of winding up.—See sections 229 and 280.

459. Repeal and savings.—(1) The enactments mentioned in the first and second columns of Part I of the Seventeenth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part of that Schedule, the provisions of the Companies Act, 1947, mentioned in the first column of Part II of that Schedule are, so far as they are not repealed by the foregoing provisions of this subsection, hereby repealed to the extent specified in the second column of that Part of that Schedule, and paragraph (2) of Regulation three of the Defence (Companies) Regulations, 1940, is hereby revoked.

(2) Nothing in this Act shall affect any Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if made, passed, given, taken, issued or done under this Act :

Provided that this subsection shall not apply to any such Order in Council, order or rule as is mentioned in any of the three next following subsections or to any regulation having effect by virtue of subsection (2) of section one hundred and twenty of the Companies Act, 1947.

(3) Any Order in Council under paragraph (e) of the proviso to subsection (1) of section fifty-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order of the Treasury under paragraph (e) of the proviso to subsection (1) of section sixty-five of this Act.

(4) Any order prescribing fees for the purposes of Part III of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were regulations under sections ninety-eight and one hundred and two of this Act.

(5) Any rule made with respect to procedure in the Court of Session or in a sheriff court (including appeals from the Sheriff Court), or with

respect to costs and fees, under section three hundred and seventy-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were contained in an Act of Sederunt under section sixteen of the Administration of Justice (Scotland) Act, 1933, or under section forty of the Sheriff Courts (Scotland) Act, 1907, as the case may be.

(6) Nothing in this Act shall affect the operation of section one hundred and thirty-seven of the Companies Act, 1929, as respects inspectors appointed before, or to continue an inspection begun by inspectors appointed before, the commencement of this Act, and section one hundred and seventy-one of this Act shall apply to a report of inspectors appointed under the said section one hundred and thirty-seven as it applies to a report of inspectors appointed under section one hundred and sixty-four of this Act.

(7) An order made on an application under section two hundred and seventeen or subsection (4) of section two hundred and seventy-five of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order under section one hundred and eighty-eight of this Act.

(8) Nothing in this Act shall affect any prosecution by a liquidator instituted or ordered by the court to be instituted under section two hundred and seventy-seven of the Companies Act, 1929, and the Board of Trade shall have the same power of directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as they would have had if this Act had not passed.

(9) Nothing in this Act shall affect—

- (a) the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865 ;
- (b) the provisions of section five of the Trade Union Act, 1871 (which avoids the registration of a trade union under the enactments relating to companies) ;
- (c) the provisions of subsection (4) of section fifty-four of the Finance Act, 1940 (which provides for payment in priority to other debts of duty payable by a company in respect of assets passing on a death by virtue of section forty-six of that Act), of any other enactment (not being one expressly repealed by this Act) relating to preferential payments or of regulations so relating having effect under any enactment ;
- (d) the provisions of subsection (2) of section eight of the Exchange Control Act, 1947 (which invalidates the subscription of the memorandum of association of a company by or on behalf of a person resident outside the scheduled territories as defined for the purposes of that Act, unless the subscription is with the permission of the Treasury) ;
- (e) the provisions of any Regulation of the Defence (Recovery of Fines) Regulations, 1942, or the provisions of any other Defence Regulation so far as not expressly revoked by this Act ;
- (f) the enactments set out in the Eighteenth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862 ;

or be construed as repealing any provision of the Assurance Companies Acts, 1909 to 1946 :

Provided that, notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889, references in any such enactment or regulations as are mentioned in paragraph (c) of this subsection to provisions

of section seventy-eight, two hundred and sixty-four or two hundred and ninety-eight of the Companies Act, 1929, shall be construed as referring both to those provisions and to the corresponding provisions of this Act.

(10) Subject to the provisions of the last foregoing subsection, any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.

(11) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act.

(12) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act.

(13) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(14) Nothing in this Act shall affect—

- (a) the incorporation of any company registered under any enactment hereby repealed ;
- (b) Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ;
- (c) Table A in the First Schedule annexed to the Companies Act, 1862, or any part thereof, either as originally contained in that schedule or as altered in pursuance of section seventy-one of that Act, so far as the same applies to any company existing at the commencement of this Act ;
- (d) Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, either as originally contained in that Schedule or as altered in pursuance of section one hundred and eighteen of that Act, so far as the same applies to any company existing at the commencement of this Act ;
- (e) Table A in the First Schedule to the Companies Act, 1929, or any part thereof, so far as the same applies to any company existing at the commencement of this Act.

(15) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(16) Save to the extent to which it is otherwise provided by subsection (9) of this section, the mention of particular matters in this section shall be without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with respect to the effect of repeals.

(17) In this section the expression " former enactment relating to companies " means the Companies Act, 1929, and any enactment repealed by that Act or by the Companies (Consolidation) Act, 1908.

NOTE

The section combines sections 381 and 382 of the 1929 Act and section 120 (3) of the 1947 Act. The last-mentioned provision came into force on December 1, 1947.

460. Provisions as to winding-up proceedings commenced before 1st November, 1929.—(1) The provisions of this Act with respect to winding up (other than sections three hundred and thirty-six, three hundred and fifty-six and three hundred and twenty-four as applied for the

purposes of the last-mentioned section and subsection (2) of this section) shall not apply to any company of which the winding up commenced before the first day of November, nineteen hundred and twenty-nine, but every such company shall be wound up in the same manner and with the same incidents as if the Companies Act, 1929, and this Act (apart from the enactments aforesaid) had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

(2) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

NOTES

The section corresponds with section 383 of the 1929 Act, as affected by the amendments introduced by sections 99 and 101 (5) of the 1947 Act, which came into force on July 1, 1948, and which are embodied in the sections of this Act here mentioned. As to subsection (2), cf. section 256 (3).

461. Application to Northern Ireland.—(1) Nothing in this Act, except the provisions thereof which relate expressly to companies registered or incorporated in Northern Ireland or outside Great Britain, shall apply to or in relation to companies registered or incorporated in Northern Ireland.

(2) Nothing in this Act, except where it is expressly provided to the contrary, shall affect the law in force in Northern Ireland at the commencement of this Act.

NOTES

The section reproduces section 384 of the 1929 Act, as applied to the provisions of the 1947 Act by *ibid.*, section 122 (7) and the Eighth Schedule. In its application to this section, the last-mentioned provisions came into force on December 1, 1947.

462. Short title and commencement.—(1) This Act may be cited as the Companies Act, 1948.

(2) This Act shall come into operation on the first day of July, nineteen hundred and forty-eight, being the day on which, by virtue of orders of the Board of Trade under section one hundred and twenty-three of the Companies Act, 1947, all the provisions of that Act will first be in operation, and immediately after all those provisions are in operation.

NOTE

Orders of the Board of Trade.—See the Companies Act (Commencement) Order, 1947 (S.R. & O. 1947 No. 2503) and the Companies Act, 1947 (Commencement) Order, 1948 (S.I. 1948 No. 439).

SCHEDULES

FIRST SCHEDULE

Sections 11, 455.

TABLES A, B, C, D AND E,

NOTES

Introductory Note

This Schedule reproduces the First Schedule to the 1929 Act, as amended with effect on July 1, 1948, by the Companies (Articles of Association and Annual Return) Regulations, 1948 (S.I. 1948, No. 434), made under the powers conferred by section 120 (2) of the 1947 Act, which came into force on March 2, 1948 by virtue of the Companies Act, 1947 (Commencement) Order, 1948 (S.I. 1948, No. 439). The former of these regulations amended (*inter alia*) Tables A, C and E of the 1929 Act. Tables D and E were further amended by the Companies (Articles of Association) Regulations, 1948 (S.I. 1948, No. 586) made under the same powers and also coming into force on July 1, 1948, and the amendments so effected are incorporated in this Schedule.

TABLE A

General Note.—Consequent upon the changes introduced by the 1947 Act, Table A has now been extensively altered, a notable feature being that special provision is now made for the particular requirements of private companies by the provision of a special set of model articles suited to those requirements in Part II. It is now necessary, in referring to the provisions of Table A, to specify whether Part I or Part II is intended.

Table A contains a model set of regulations for the management of a company limited by shares, and section 8 (2), provides that, in the case of such a company registered after July 1, 1948, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify the regulations in Table A, those regulations are, so far as applicable, the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. A clause of Table A may, however, be excluded by implication (see *Paterson (R.) & Sons, Ltd. v. Paterson*, [1916] W.N. 352, H.L.; 9 Digest 556, 3686). Companies registered under former Acts are not affected by the present Table A, but are still governed by their former tables (see section 459 (14)). Table A may be adopted by companies limited by guarantee or by unlimited companies (see section 8 (1)), but Table A does not apply automatically to such companies unless and except as expressly adopted by special resolution (see section 394 (3) (a)).

Table A has statutory authority, and provisions contained therein, or copied from it into special articles, are valid although not otherwise authorised by the Act (*Lock v. Queensland Investment and Land Mortgage Co.*, [1896] A.C. 461; 9 Digest 338, 2137), and its contents may be considered for the purpose of ascertaining the intentions of the legislature in the Act (*Re Barned's Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. App. 105, at pp. 113, 114; 9 Digest 363, 2308).

As to the power of the Board of Trade to alter Table A, see section 454 (2). As to alteration of articles, see section 10.

TABLE A

PART I

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED
BY SHARES, NOT BEING A PRIVATE COMPANY

Interpretation

1. In these regulations :—

“ the Act ” means the Companies Act, 1948.

“ the seal ” means the common seal of the company.

“ secretary ” means any person appointed to perform the duties of the secretary of the company.

“ the United Kingdom ” means Great Britain and Northern Ireland.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

NOTES

This article corresponds with article 1, Table A, 1929 Act. Further definitions have been added of the expressions “ seal,” “ secretary,” “ United Kingdom,” while the term “ writing ” is defined in similar terms to those in the Interpretation Act, 1889, sec. 20 (18 Halsbury's Statutes 1001).

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

3. Subject to the provisions of section 58 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

6. The company may exercise the powers of paying commissions conferred by section 53 of the Act, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of 10 per cent. of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent. of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of 2s. 6d. for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon. Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 2s. 6d. or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 54 (1) of the Act.

NOTES

These provisions as to share capital, etc., correspond with articles 2 to 6 of the 1929 Act, Table A. The present Table, however, has made certain important changes, as follows :—

Articles 2, 3.—These two articles correspond with the old article 2. The substantial points of difference are that shares with preferred or other special rights may now be issued on conditions determined by the company by *ordinary* resolution instead of by *special* resolution, as hitherto. Similarly, redeemable preference shares may be issued with the sanction of an ordinary (instead of a special) resolution, provided the terms of redemption have been previously determined by special resolution. It will be noted, however, that the provisions of section 58, *ante*, must be observed.

Article 4 substantially reproduces the old article 3. The only point of difference is that the rights attached to any class of shares may be varied whether or not the company is being wound up. As to variation of rights, see section 72, *ante*. As to what constitute different classes of shares, see *Greenhalgh v. Arderne Cinemas Ltd.*, [1945] 2 All E.R. 719.

Articles 5 to 7 are new. The effect of article 5 is that such creation or issue of further shares will not bring into operation the provisions of section 72, *ante*, so as to enable the holders of the original shares to apply to the Court for cancellation.

Article 6 brings into operation the provisions of section 53, *ante*, which enables commissions, etc., to be paid provided certain conditions are fulfilled, including (*inter alia*) that the payment of the commission is authorised by the articles (see section 53 (1) (a), *ante*). No such provision was contained in the old Table A, and companies which have adopted that Table A will have to alter their articles before they can pay such commission.

Article 7.—Section 117, *ante*, provides that, in the case of companies registered in England, trusts are not to be entered on the register. This article empowers the company to treat a shareholder as the absolute owner of his registered shares. Where such an article provides (as this does) that the company shall not be bound to recognise any equitable interest in shares, the company is not bound to accept or preserve notices of equitable interests, and such notices do not affect the company or its officers or agents with any trust (*Société Générale de Paris v. Walker* (1885), 11 App. Cas. 20, at p. 30; 9 Digest 364, 2325). See, however, *Bradford Banking Co. v. Briggs* (1886), 12 App. Cas. 29; 9 Digest 344, 2179; *Peat v. Clayton*, [1906] 1 Ch. 659; 9 Digest 387, 2448.

Article 8 corresponds with the old article 4. A new feature is that a member is entitled to several certificates each for one or more of his shares upon payment of a maximum fee of 2s. 6d. for every certificate after the first.

Article 9 corresponds with the old article 5. New provisions are that a maximum fee of 2s. 6d. is payable for a new certificate instead of 1s. as formerly, and, in addition, the company's out-of-pocket expenses in investigating evidence is payable.

Article 10 corresponds with the old article 6. It is, however, drafted in rather wider terms, following the extended provisions of section 54, *ante*, and includes a similar prohibition on loans, etc., for the purchase of the shares of a company's holding company, as well as for those of the company itself.

Lien

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

13. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

NOTES

These articles reproduce the old articles 7 to 10, except that the lien conferred by article 7 is now expressed to be a "first and paramount" lien, thus granting the company priority over liens claimed by other persons. As to how far this priority is effective against previous equitable interests, see *Bradford Banking Co. v. Briggs* (1886), 12 App. Cas. 29; 9 Digest 344, 2179. The lien extends to any moneys receivable in respect of the shares in a winding up (*Re General Exchange Bank, Re Lewis* (1871), 6 Ch. App. 818; 9 Digest 343, 2171). A paramount lien on shares held by more persons than one in respect of all moneys owing to the company by any of the holders, entitles the company to a lien on shares held by trustees in respect of debts due to the company by a firm of which one of such trustees is a member, paramount to the claims of the beneficiaries (*New London and Brazilian Bank v. Brocklebank* (1882), 21 Ch. D. 302, C.A.; 9 Digest 345, 2181). The company, however, has no lien for debts due from beneficiaries who are not registered holders (*Re Perkins, Ex parte Mexican Santa Barbara Mining Co.* (1890), 24 Q.B.D. 613, C.A.; 9 Digest 345, 2182), and cannot alter its register of shareholders by substituting their names for those of the trustees (*Re Ystalyfera Gas Co.*, [1887] W.N. 30; 9 Digest 210, 1305). The company's lien is lost if it registers a transfer of the shares which are subject to the lien (*Higgs v. Assam Tea Co.* (1869), L.R. 4 Ex. 387; 9 Digest 345, 2184), and it may be discharged by a new arrangement between the company and the shareholder (*Bank of Africa v. Salishury Gold Mining Co.*, [1892] A.C. 281, P.C.; 9 Digest 346, 2187).

Calls on Shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 5 per cent. per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 5 per cent. per annum, as may be agreed upon between the directors and the member paying such sum in advance.

NOTES

These articles correspond with the old articles 11 to 16. The following changes have been introduced:—

Article 15.—The power to make calls in respect of moneys unpaid on shares is expressed to apply not only to the nominal value of the shares, but also to moneys by way of premium, and is limited to such moneys as are not, by the conditions of their allotment, made payable at fixed times. It is now also provided that they are to be payable not less than one month from the date fixed for the payment of the last preceding call and not from the date of the last preceding call itself as hitherto. The notice of the call must specify the place, as well as the time, of payment and provision is now made for the revocation or postponement of a call. As to making two calls payable at different times, see *Universal Corporation, Ltd. v. Hughes*, [1909] S.C. 1434; 9 Digest 324, c.

Article 16 is new.

Article 17 reproduces the old article 12.

Article 18.—The rate of interest is left to the discretion of the directors with a maximum of 5 per cent. instead of being fixed as 5 per cent, as in the old article 13, with which this article corresponds.

Article 19 is substantially the old article 14 redrafted and clarified and is adapted to the variations specified above. It applies the provisions of the Table to any sum which, by the terms of issue, becomes payable on allotment or at any fixed date both as to payment of interest and expenses and as regards forfeiture "and otherwise."

Article 20 reproduces the old article 15. In the absence of this provision, the directors' calls may not be made on some shareholders and not on others (*Galloway v. Hallé Concerts Society*, [1915] 2 Ch. 233; 9 Digest 321, 2035).

Article 21 reproduces the old article 16, except that the rate of interest allowed on calls in advance is now a maximum of 5 per cent instead of 6 per cent, as formerly. This rate may, however, be increased if so directed by the company in general meeting.

As to lien on shares for moneys called up, see articles 11 to 14, *supra*. The company may refuse to register the transfer of a share on which it has a lien (see article 24, *infra*), and the shareholders on the register when the call is made are those who are liable to pay the call (see *North American Colonial Association of Ireland v. Bentley* (1850), 19 L.J. (Q.B.) 427; 10 Digest 1217, 8604).

Action for recovery of call moneys.—Moneys payable on call are recoverable by action commenced by writ, which may be specially indorsed under R.S.C., Order 3, rule 6. Calls made but not paid before winding up may be enforced by action brought by the liquidator in the name of the company (*Westmoreland Green and Blue Slate Co. v. Fielden*, [1891] 3 Ch. 15, C.A.; 10 Digest 920, 6303). Calls are specialty debts due from the members of the company (*Cork and Brandon Rail. Co. v. Goode* (1853), 13 C.B. 826; 10 Digest 1139, 8045).

Moneys paid in advance of calls.—See section 59 (b). The exercise of this power is valid, even though it confers a collateral advantage on the directors (*Poole, Jackson and Whyte's Case* (1878), 9 Ch. D. 322, C.A.; 9 Digest 338, 2138), but not if it is exercised solely for their benefit (*Sykes' Case* (1872), L.R. 13 Eq. 255; 9 Digest 498, 3273). For the purpose of sanctioning a scheme of arrangement (see section 206), shareholders with uncalled moneys paid in advance are in a separate class from fully-paid shareholders (*Re United Provident Assurance Co., Ltd.*, [1910] 2 Ch. 477; 10 Digest 1058, 7604). As to the extent to which a shareholder paying moneys in advance of calls is a creditor of the company, see *Lock v. Queensland Investment and Land Mortgage Co.*, [1896] 1 Ch. 397, C.A.; affirmed, [1896] A.C. 461; 9 Digest 333, 2137.

Method of making calls.—Under Table A, calls may be made only by the directors, and this power can only be exercised by a quorum of directors present at a duly convened meeting (*Moore v. Hammond* (1827), 6 B. & C. 456; 9 Digest 516, 3386), and must be made by directors properly appointed (*Howbeach Coal Co., Ltd. v. Teague* (1860), 5 H. & N. 151; 9 Digest 323, 2043). The directors' discretion as to making or abstaining from making calls will not be reviewed by the Courts in the absence of bad faith (*Odessa Tramways Co. v. Mendel* (1878), 8 Ch. D. 235, C.A.; 9 Digest 244, 1533). The power to make calls is fiduciary as regards the shareholders, and the directors must have regard to the interests of the company and must exercise their powers fairly as between different shareholders, and not with a view to giving themselves an unfair advantage (*Gilbert's Case* (1870), 5 Ch. App. 559; 9 Digest 321, 2037). But the directors are not trustees for the company's creditors (*Poole, Jackson and Whyte's Case, supra*). The resolution must comply with the provisions of the articles and must in any case, state the amount of the call and the time and place at which it is to be paid, or the call will be invalid (*Johnson v. Lytle's Iron Agency* (1877), 5 Ch. D. 687, C.A.; 9 Digest 339, 2145). Provided the notice of the call is served as directed by the articles and is addressed to a member at his registered address it is good, notwithstanding his previous death, if the company has no notice thereof (*New Zealand Gold Extraction Co. (Newbery-Vautin Process) v. Peacock*, [1894] 1 Q.B. 622, C.A.; 9 Digest 322, 2039), and an inaccurate notice, provided it is a clear notice of call, will not invalidate the call (*Chubwa Tea Co. of Assam, Ltd. v. Barry* (1866), 15 L.T. 449; 9 Digest 325, 2054).

Transfer of Shares

22. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and, except as provided by sub-paragraph (4) of paragraph 2 of the Seventh Schedule to the Act, the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

24. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which the company has a lien.

25. The directors may also decline to recognise any instrument of transfer unless:—

- (a) a fee of 2s. 6d. or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of share.

26. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

28. The company shall be entitled to charge a fee not exceeding 2s. 6d. on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, notice in lieu of distringas, or other instrument.

NOTES

These articles correspond with the old articles 17 to 19. The following innovations should be noted:—

Article 22 (which corresponds with the old article 17) makes an exception to the general rule that the transferor is deemed to be the holder until the transferee's name is entered on the register in the case of paragraph 2 (4) of the Seventh Schedule, *post*, for the purpose of determining the holder of shares in deciding whether a company is an exempt private company.

Article 23 does not give a specimen form of transfer as did the corresponding article in the old Table A. Instead, a general principle is laid down.

Articles 24 to 27 correspond with the old article 19, and introduce the following innovations: (i) a lower fee than 2s. 6d. may be charged in respect of the instrument of transfer; (ii) the directors may decline to recognise an instrument of transfer unless it is in respect of only one class of share (article 25); (iii) registrations may be suspended at any time, so long as the total periods do not exceed 30 days in any year (article 27). The old article 19 provided for such suspension only for 14 days immediately preceding the ordinary general meeting. It will be noted that article 24 is excluded by Part II, *post*, in the case of a private company and is replaced by article 3 of that Part.

Article 28 is new.

Common form.—When the articles require the common form, registration of a transfer cannot be refused because it omits particulars which would be found in the common form, but are in the circumstances immaterial (*Re Letheby and Christopher, Ltd.*, [1904] 1 Ch. 815 ; 9 Digest 360, 2289).

Execution of transfer.—Although article 22 requires that the instrument shall be executed both by the transferor and transferee, non-execution by the transferee only makes the transfer irregular but not a nullity, and if it has been acted on for a long period it cannot be impeached (*Re Taurine Co.* (1883), 25 Ch. D. 118, C.A. ; 9 Digest 348, 2203).

Registration of transfer.—Until the instrument of transfer is registered, the transfer is not complete and the transferor remains the legal owner of the shares and is liable to pay calls thereon (*Sayles v. Blane* (1849), 14 Q.B. 205 ; 10 Digest 1135, 8009), but a transferee who has accepted the transfer, though he has not executed it, is liable to indemnify the transferor as from the date thereof (*Loring v. Davis* (1886), 32 Ch. D. 625 ; 9 Digest 352, 2228). The transferee is the proper person to apply for registration (*Skinner v. City of London Marine Insurance Corporation* (1885), 14 Q.B.D. 882, C.A. ; 9 Digest 350, 2216), but the transferor may also apply (see section 77, *ante*). The transferor may enforce the registration by obtaining an order for rectification of the register (*Re Stranton Iron and Steel Co.* (1873), L.R. 16 Eq. 559 ; 9 Digest 218, 1371).

Transmission of Shares

29. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares ; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company :

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

NOTES

These articles correspond with the old articles 20 to 22.

Article 29 reproduces in substance the old article 20. A provision is, however, added preserving the liability of the estate of a deceased joint holder.

Article 30 is substantially the same as the old article 21.

Article 31 is new and merely clarifies the provisions of article 30.

Article 32 reproduces the old article 22, except for the proviso, which is new.

Transmission.—This term means transmission by devolution of law, including devolution by death or bankruptcy, as distinct from transfer, which means transfer by the act of a member (see *Barton v. London and North Western Rail. Co.* (1889), 24 Q.B.D. 77, C.A., at p. 88 ; 10 Digest 1141, 8063, and see section 75).

Joint holders.—In the absence of provision to the contrary, the survivor or survivors of registered joint holders of shares are alone entitled to and liable upon such shares (*Maxwell's Case, Hill's Case* (1875), L.R. 20 Eq. 585 ; 9 Digest 410, 2635). It will be noted, however, that article 29 preserves the liability of the deceased holder.

Sole holder.—Upon the death of the sole holder of shares, the title to his shares devolves upon his personal representatives, who may transfer the shares without themselves being registered (see section 76). As to evidence of grant of probate, see section 82. The person having the legal right to shares in consequence of the death of the member is entitled to have his name entered on the register (*Scott v. Frank F. Scott (London) Ltd.*, [1940] Ch. 794 ; [1940] 3 All E.R. 508, C.A. ; 2nd Digest Supp.).

Bankruptcy.—On a registered member being adjudicated bankrupt, his shares vest in his trustee in bankruptcy (Bankruptcy Act, 1914, section 18 (1), 48, 53).

Forfeiture of Shares

33. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

34. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

35. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

36. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

37. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

38. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

39. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

NOTES

These articles reproduce the old articles 23 to 29, except that it is now provided that the statutory declaration referred to in article 38 may be made by the secretary as well as by a director, and that the liability under article 37 remains until all moneys due in respect of the shares are paid, and not merely the nominal amount, as formerly.

Forfeiture of shares.—A forfeiture of shares effects a reduction of the company's capital, but does not require confirmation by the Court (as to which see section 67). This power to reduce capital by forfeiting shares is, however, confined to cases where calls on, or other amounts due in respect of the shares are not paid (*Hopkinson v. Mortimer, Harley & Co., Ltd.*, [1917] 1 Ch. 646; 9 Digest 343, 2168). A forfeiture of shares is invalid if it is not made for the company's benefit (*Harris v. North Devon Rail. Co.* (1885), 20 Beav. 384; 10 Digest 1146, 8104).

Re-allotting forfeited shares.—Where shares have been forfeited by the company, it may on re-allotting them give credit for money already received in respect of them, and this does not amount to the issue of shares at a discount (*Morrison v. Trustees, Executors and Securities Insurance Corporation* (1898), 68 L.J. (Ch.) 11, C.A.; 9 Digest 433, 2816). Where credit for the amount already paid is given, the new allottee becomes liable for the balance remaining unpaid on the shares (*New Balkis Eersteling, Ltd. v. Randt Gold Mining Co.*, [1904] A.C. 165, at p. 168; 9 Digest 433, 2821).

Conversion of Shares into Stock

40. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

41. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

NOTES

These articles reproduce the old articles 30 to 33 without material alteration.

Shares, stock.—See section 455 (1).

Conversion of shares into stock, etc.—See section 61. As to notice to the registrar, see section 62. As to entries in the register of members, see section 110.

Alteration of Capital

44. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

45. The company may by ordinary resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (b) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 61 (1) (d) of the Act ;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law.

NOTES

These articles reproduce the old articles 34, 37 and 38, except that article 46 (which corresponds with the old article 38), enables the share premium account to be reduced, as well as the share capital and capital redemption reserve fund. The old articles 35 and 36 are not reproduced in this Table. In consequence, a company adopting the present Table need not offer new shares to existing members before issue.

Increase of share capital.—See section 61.

Consolidation, subdivision, cancellation.—See section 61.

Share premium account.—See section 56.

General Meetings

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it ; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 132 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

NOTES

These articles replace the old articles 39 to 41, the changes therein being consequent on the changes effected by section 131. It will be noted that the "ordinary" meeting is now termed the annual general meeting, all other meetings being extraordinary general meetings.

Annual general meeting.—See section 131.

Extraordinary general meeting.—See section 132.

The members, as a body, can only act through a general meeting unless all the shareholders assent, in which case the formalities of a meeting need not be complied with (*Re Express Engineering Works, Ltd.*, [1920] 1 Ch. 466, C.A. ; 9 Digest 569, 3779), and it is not necessary for them to come together in a meeting (*Parker and Cooper, Ltd. v. Reading*, [1926] Ch. 975 ; Digest Supp. See also section 143 (4) (d)).

Notice of General Meetings

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the

hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company :

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat ; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent. in nominal value of the shares giving that right.

51. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

NOTES

These articles correspond with the old articles 42 and 43.

Article 50 materially alters the provisions of the old article 42, such changes being consequent on, and in conformity with, the provisions of section 133.

Article 51 reproduces the old article 43, except that, in place of " member " is substituted " person entitled to receive notice." This would now include the auditor (see article 134).

See further as to notices, articles 131 to 134.

Proceedings at General Meetings

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business ; save as herein otherwise provided, three members present in person shall be a quorum.

54. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

- (a) by the chairman ; or
- (b) by at least three members present in person or by proxy ; or
- (c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting ; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority,

or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

59. Except as provided in regulation 61, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

NOTES

These articles correspond with the old articles 44 to 53. The following modifications should be noted :—

Article 52.—The “ordinary” meeting is now called the annual general meeting (see also article 47, *supra*). All reports of the directors and auditors are now ordinary business and not merely the ordinary report, as previously. Elections of directors in place of those retiring for any reason are now ordinary business, and not merely when they retire by rotation. On the other hand, the election of other officers is now special business. The appointment of auditors is now also ordinary business.

Article 53 reproduces the old article 45.

Article 54 reproduces the old article 46, except that the directors may determine the time and place of the adjourned meeting where there is no quorum at the original meeting.

Articles 55, 56 correspond with the old articles 47, 48, but the appointment of chairman, in the absence or unwillingness to act of the chairman of the board of directors is now the business of the other directors, and it is only in default of an appointment by them that the members may choose a chairman.

Article 57 reproduces the old article 49, except that notice of an adjourned meeting need only be given when it is adjourned for at least 30 days, instead of 10 days, as formerly.

Article 58 replaces the old article 50, and sets out the conditions in which a poll may be demanded. These correspond largely with the requirements of section 137, but have been modified to provide that any three members may demand a poll as may also the chairman. It is now also provided that the demand for a poll may be withdrawn.

Article 59 reproduces the old article 51, except that its provisions are now subject to those of article 61.

Article 60 reproduces the old article 52.

Article 61 reproduces the old article 53, with a provision added permitting other business to be proceeded with pending the taking of the poll.

Proceedings at general meetings.—See generally section 134.

Annual general meeting.—See section 131.

Appointment of auditors.—See sections 159, 160.

Appointment and removal of directors.—See sections 183 to 185.

Right to demand a poll.—See section 137.

Quorum.—See section 134. If the quorum is not present within the prescribed time, no business can be transacted, except as provided by the company's regulations and a resolution passed at a meeting at which there is no quorum is void (*Re Cambrian Peat, Fuel and Charcoal Co., Ltd., De La Mott's and Turner's Case* (1875), 31 L.T. 773; 9 Digest 569, 3773). As to whether a member present only by proxy can be counted in a quorum, see *ibid.*, and as to whether a member not entitled to vote may be counted, see *Young v. South African and Australian Exploration and Development Syndicate*, [1896] 2 Ch. 268, at p. 277; 9 Digest 561, 3721.

Adjourned meeting.—Where the chairman has the right, with the consent of the meeting, to adjourn it, he cannot be compelled to do so (*Salisbury Gold Mining Co. v. Hathorn*, [1897] A.C. 268, P.C.; 9 Digest 580, 3879), but he cannot adjourn or dissolve the meeting against the wish of the majority (*National Dwellings Society v. Sykes*, [1894] 3 Ch. 159; 9 Digest 570, 3784). Where the business of a meeting has been completed with the exception of the taking of a poll, the meeting at which the poll is taken is not an adjourned meeting (*Shaw v. Tati Concessions, Ltd.*, [1913] 1 Ch. 292; 9 Digest 581, 3881). An adjourned meeting is legally a continuation of the original meeting (*Scadding v. Lorant* (1851), 3 H.L. Cas. 418; 13 Digest 341, 794).

Poll.—At common law, a person entitled to vote at a meeting has a right to demand a poll (*R. v. Wimbledon Local Board* (1882), 8 Q.B.D. 459, C.A.; Digest Supp.). Joint holders of the specified number of shares may demand a poll without other support (*Siemens Brothers & Co. v. Burns*, [1918] 2 Ch. 324, C.A.; 9 Digest 573, 3805). The right to demand a poll should be exercised immediately after the declaration by the chairman of the result of the show of hands (*Campbell v. Maund* (1836), 5 Ad. & El. 865; 19 Digest 271, 556). The demand may be made privately to the chairman and by him communicated to the meeting (*Re Phoenix Electric Light and Power Co., Ltd.* (1883), 48 L.T. 260; 9 Digest 574, 3814). Unless the articles state the place and time for taking the poll, the chairman may direct the manner of taking it (*Re Chillington Iron Co.* (1885), 29 Ch. D. 159; 9 Digest 574, 3819). In the absence of special powers, he cannot direct the votes to be taken by means of voting papers (*McMillan v. Le Roi Mining Co., Ltd.*, [1906] 1 Ch. 331; 9 Digest 574, 3821). A poll is part of the meeting, and for the purpose of taking it the meeting continues until the poll is closed (*Shaw v. Tati Concessions, Ltd.*, *supra*).

Votes of Members

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

64. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

“Limited
I/We, _____, of _____, in
the county of _____, being a member/members of
the above-named company, hereby appoint
of _____, or failing him,
of _____, as my/our proxy to vote for me/us on my/our
behalf at the [annual or extraordinary, as the case may be] general meeting of the
company to be held on the _____ day of _____ 19____, and at any
adjournment thereof.

Signed this _____ day of _____ 19____.”

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

“Limited
I/We, _____, of _____, being a member/members of the
above-named company, hereby appoint
of _____, or failing him,
of _____, as my/our proxy to vote for me/us on my/our
behalf at the [annual or extraordinary, as the case may be] general meeting of the
company, to be held on the _____ day of _____ 19____, and at any
adjournment thereof.

Signed this _____ day of _____ 19____.

This form is to be used *in favour of the resolution. Unless otherwise instructed,
against
the proxy will vote as he thinks fit.

* Strike out whichever is not desired.”

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

NOTES

These articles correspond with the old articles 54 to 62.

Article 62 reproduces the old article 54, except that the general rule is now subject to the rights or restrictions of various classes of shares.

Articles 63 to 65 reproduce the old articles 55 to 57.

Article 66 is new. It prevents the qualification of a voter being questioned after the meeting at which he has exercised his vote.

Articles 67 and 68 reproduce the old articles 58 and 59.

Article 69 reproduces the old article 60, with the following modifications : (i) proxies may be lodged not only at the company's registered office, but also at any other specified place in the United Kingdom ; (ii) proxies may be lodged 24 hours before the time appointed for the taking of a poll.

Article 70 corresponds with the old article 61, and provides a slightly different form of proxy from the one there given, such form, or one *as near thereto as the circumstances admit* to be used.

Article 71 is new and provides an alternative form of proxy, enabling him to vote for or against a resolution (see section 138).

Article 72 reproduces the old article 62.

Article 73 is new.

Votes of members.—See section 134 (e).

Proxies.—See sections 136 to 138.

Member with calls in arrear.—Where the articles provide that there is no right to vote while any sum is due in respect of the shares, a purchaser of a forfeited share cannot vote while the former holder's calls are unpaid (*Randt Gold Mining Co., Ltd. v. Wainwright*, [1901] 1 Ch. 184 ; 9 Digest 573, 3803).

Show of hands.—Unless a poll is demanded, the voting is by show of hands, and each member personally present and voting is counted as one (*Ernest v. Loma Gold Mines, Ltd.*, [1897] 1 Ch. 1, C.A. ; 9 Digest 577, 3846). Proxies cannot be counted, nor may the votes conferred by the shares represented (*ibid.*).

Corporations acting by Representatives at Meetings

74. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

NOTE

This article reproduces the old article 63. See also section 139, *ante*.

Directors

75. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

76. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

77. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

78. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise direct.

NOTES

These articles correspond with the old articles 64 to 66.

Article 75 reproduces the old article 64.

Article 76 reproduces, in its first sentence, the old article 65, but goes on to provide that remuneration shall accrue from day to day, and allows directors travelling and other expenses.

Article 77 replaces the old article 66, which provided for a qualification of one share. No qualification share need now be required.

Article 78 is new.

Remuneration.—The provision that remuneration is to accrue from day to day will obviate the difficulties discussed in *McConnell's Claim*, [1901] 1 Ch. 728; 9 Digest 462, 3001, and in *Gilman v. Glicher Electric Light Co.* (1886), 3 T.L.R. 133, C.A.; 9 Digest 460, 2983; as to whether a director's remuneration is apportionable.

Travelling expenses.—It has been held, that, apart from special provision in the articles, directors cannot claim travelling expenses (see *Young v. Naval, Military and Civil Service Co-operative Society of South Africa*, [1905] 1 K.B. 687; 9 Digest 463, 3007). Under article 76, however, they will now be able to do so.

Borrowing Powers

79. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party :

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

NOTES

This article corresponds with article 69 of the old Table. It has, however, been considerably extended. Borrowing powers are still limited to the amount of the issued share capital, unless the excess is sanctioned by the company in general meeting, but temporary bank loans obtained in the ordinary course of business are excluded, and the lender, etc., is not affected with notice that the limit has been exceeded unless such notice was express and given at the time when the debt was incurred or security given. This modifies the position laid down in *Fountain v. Carmarthen Rail. Co.* (1868), L.R. 5 Eq. 316; 10 Digest 1178, 8361, where it was held that where the borrowing powers of a company are limited, any security given for any amount lent to the company beyond the limit is void. In *Re National Permanent Benefit Building Society, Ex parte Williamson* (1869), 5 Ch. App. 309; 10 Digest 738, 4616, it was held that if a company borrows money in circumstances which render the borrowing *ultra vires*, no debt arises either at law or in equity, and the lender cannot recover the money in an action for money had or received or in any other action *in personam*. Presumably, this would be modified in the present case to apply only where the lender had express notice of the fact at the time of the transaction.

Power of company to borrow money.—A trading or commercial company has an implied power to borrow, and to mortgage or charge all or any part of its property to secure the money so borrowed, provided such power is not expressly prohibited (*Re Badger, Mansell v. Cobham (Viscount)*, [1905] 1 Ch. 568, at p. 574; 32 Digest 262, 457). No such power is implied in the case of any other company (*ibid.*), and the power can be exercised only if authorised by its memorandum; see generally as to such borrowing powers, 5 Halsbury's Laws (2nd Edn.), pp. 464, *et seq.*

Powers and Duties of Directors

80. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

81. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

82. The company may exercise the powers conferred by section 35 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

83. The company may exercise the powers conferred upon the company by sections 119 to 123 (both inclusive) of the Act with regard to the keeping of a dominion register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

84.—(1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 199 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

- (a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or
- (b) to any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or
- (d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities; and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

85. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

86. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

87. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependents and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

NOTES

These articles replace articles 67 and 70 of the old Table.

Article 80 reproduces the old article 67 and

Article 86 reproduces the old article 70. All the rest are new. The old Table did not deal fully with the requirements now contained in section 199, as to the disclosure by a director of his interests in contracts with the company. It merely dealt with the matter by a passing reference in article 72, thereof (now replaced by article 88, *infra*).

Article 84 now makes detailed provisions in this connection. It provides that, apart from requiring a director to declare the nature of his interest in accordance with section 199, he may not vote or be counted in the quorum present where such contracts, etc., are discussed, except in the cases specified in sub-clause (2) of that article. It permits a director to hold an office of profit under the company and to enter into contracts with the company and provides that he need not account for profits realised by such contracts by reason only of holding such office or the fiduciary relationship so established (article 84 (3)). A director is not precluded from

voting or being counted in the quorum at a meeting of the company, as distinct from a meeting of the directors, on a matter affecting his interest (article 84 (4)). Neither is he precluded from acting in a professional capacity to the company (except as auditor) or accepting remuneration therefor (article 84 (5)).

Article 87 allows a company to pay gratuities and pensions.

Article 82.—See section 35.

Article 83.—See sections 119 to 123.

Powers of directors.—Where powers are conferred on the directors as under article 80, *supra*, a simple majority of members at a meeting may control the actions of the directors (*Marshall's Valve Gear Co., Ltd. v. Manning, Wardle & Co., Ltd.*, [1909] 1 Ch. 267; 9 Digest 475, 3117), unless the resolution passed is inconsistent with some article (*Quin and Axtens, Ltd. v. Salmon*, [1909] A.C. 442; 9 Digest 475, 3116). Directors may do whatever is fairly incidental to the exercise of their powers in carrying out the objects of the company (*Hutton v. West Cork Rail. Co.* (1883), 23 Ch. D. 654, C.A.; 9 Digest 474, 3109). The management of the business (including its finance) is the duty of the directors, and the company in general meeting cannot interfere with it (*Scott v. Scott*, [1943] 1 All E.R. 582; 2nd Digest Supp.). As to the delegation of powers by the directors, see article 102, *infra*.

Minutes.—See section 145.

Disqualification of Directors

88. The office of director shall be vacated if the director—

- (a) ceases to be a director by virtue of section 182 or 185 of the Act; or
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) becomes prohibited from being a director by reason of any order made under section 188 of the Act; or
- (d) becomes of unsound mind; or
- (e) resigns his office by notice in writing to the company; or
- (f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

NOTES

This article replaces the old article 72. The following new grounds of disqualification are added: (i) reaching the retiring age under section 185, *ante*; (ii) making an arrangement or composition with his creditors (as well as bankruptcy, which was a ground of disqualification under the old Table); (iii) absence from directors' meetings for more than six months without the directors' permission. The following provisions of the old Table are no longer operative: (i) holding an office of profit under the company (see now article 84 (3), *supra*); (ii) interest in contracts with the company (see now article 84 (1) (2), *supra*).

Bankruptcy.—Bankruptcy is a disqualification only where it occurs after his appointment. Being already a bankrupt is not becoming bankrupt (*Dawson v. African Consolidated Land and Trading Co.*, [1898] 1 Ch. 6, C.A.; 9 Digest 433, 2823). An undischarged bankrupt may not, however, act as director without leave of the Court (see section 187, *ante*).

Absence from meetings.—As to meaning of "absence," see *McConnell's Claim*, [1901] 1 Ch. 728; 9 Digest 462, 3001). The absence must be voluntary and not accidental, and the absence dates from the first meeting which the director fails to attend.

Resignation.—Where the articles provide that a director is to vacate his office *ipso facto* if by notice in writing to the company he resigns his office, an oral resignation, if accepted by the company, is valid (*Latchford Premier Cinema, Ltd. v. Ennion*, [1931] 2 Ch. 409; Digest Supp.).

Rotation of Directors

89. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

90. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

91. A retiring director shall be eligible for re-election.

92. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

93. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

94. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

95. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

96. The company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

97. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding regulation, and without prejudice to the powers of the directors under regulation 95 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

NOTES

These articles correspond with articles 73 to 80 of the old Table.

Article 89 substantially reproduces the old article 73, except that for the reference in that article to the "ordinary general meeting" there is substituted a reference to the "annual general meeting."

Articles 90, 91 reproduce the old articles 74, 75.

Article 92 substantially reproduces the old article 76. An important variation is that a retiring director is not deemed re-elected in default of another appointment if (i) it is *expressly* resolved not to fill such vacancy (the word "expressly" is new); or (ii) a resolution for the re-election of that director has been put to the meeting and lost. This will obviate a position arising as in *Grundt v. Great Boulder Proprietary Gold Mines, Ltd.*, [1948] Ch. 145; [1948] 1 All E.R. 21, C.A., where a resolution for the re-election of a director was lost, but he was held to be automatically re-elected in default of another appointment in his place.

Article 93 is new, but is a frequent provision in a company's special articles.

Article 94 reproduces the old article 77.

Article 95 reproduces the old articles 78 and 79. It reproduces the substance of these old articles without material change.

Articles 96, 97 replace the old article 80. They follow, in general, the provisions of section 184.

Annual general meeting.—See section 131.

Ordinary resolution on special notice.—See section 142.

Consent of director to act.—See section 181.

Casual vacancy.—I.e. a vacancy occurring otherwise than by retirement in rotation (*Munster v. Cammell Co.* (1882), 21 Ch. D. 183, at p. 187; 9 Digest 436, 2834).

One-third to retire annually.—This provision cannot apply where the number of directors is two (*Re Moseley (David) & Sons, Ltd.*, [1939] Ch. 719; [1939] 2 All E.R. 791; Digest Supp.). As to its effect on a service agreement, see *Walker v. Kenms, Ltd.*, [1937] 1 All E.R. 566, C.A. Digest Supp.

Determination by lot.—See *Eyre v. Milton Proprietary, Ltd.*, [1936] Ch. 244, C.A.; Digest Supp.

Automatic re-election.—See *Re Great Northern Salt and Chemical Works, Ex parte Kennedy* (1890), 44 Ch. D. 472, at p. 482; 9 Digest 435, 2832. The position is now somewhat modified by the latter part of article 92, as to which see the note, *supra*.

Notice of intention to propose person for re-election.—See *Transport, Ltd., v. Schonberg* (1905), 21 T.L.R. 305; 9 Digest 442, 2867. As to election at an adjourned meeting, see *Catesby v. Burnett*, [1916] 2 Ch. 325; 9 Digest 439, 2854, and section 144.

Proceedings of Directors

98. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

99. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

100. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general-meeting of the company but for no other purpose.

101. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

105. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

106. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

NOTES

These articles reproduce without material change articles 81 to 88 of the old Table, with the following minor modifications :—

Article 98.—Notice of a meeting need not be sent to a director who is absent from the United Kingdom.

Article 99.—The quorum is two, unless otherwise fixed by the directors.

Article 106 is new, but reproduces a provision frequently found in a company's special articles.

Meetings of directors.—Directors can only act validly when assembled at a board meeting, unless the articles otherwise provide (*Re Athenæum Life Insurance Society, Ex parte Eagle Insurance Co.* (1858), 4 K. & J. 549, at p. 558; Digest Supp.), except as regards strangers who contract with the company without notice of this defect (*Re Bonelli's Telegraph Co., Collier's Claim* (1871), L.R. 12 Eq. 246; 9 Digest 476, 3125). A regular board meeting may be dispensed with if all the shareholders consent to what is done (*Re Express Engineering Works, Ltd.*, [1920] 1 Ch. 466, C.A.; 9 Digest 521, 3423), and, under this Table, the directors may also dispense therewith (see article 106, *supra*).

Quorum.—See *Re Greymouth-Point Elizabeth Rail. and Coal Co., Ltd.*, *Yuill v. Greymouth-Point Elizabeth Rail. and Coal Co.*, [1904] 1 Ch. 32; 9 Digest 519, 3407).

Chairman.—Where a chairman is elected for an unspecified period, he is not entitled to remain chairman so long as he is a director (see *Foster v. Foster*, [1916] 1 Ch. 532; 9 Digest 440, 2856). An irregular appointment is not regularised by acquiescence over a long period (*Clark v. Workman*, [1920] 1 I.R. 107; 9 Digest 441, 1).

Delegation of powers.—Unless they have special authority to do so, directors cannot delegate their powers (*Howard's Case* (1866), 1 Ch. App. 561; 9 Digest 481, 3151). Where they have sufficient powers to delegate, they may delegate their powers to committees or even to a single director (*Re Fire Proof Doors, Ltd., Umney v. Fireproof Doors, Ltd.*, [1916] 2 Ch. 142; 9 Digest 518, 3398). Where any specific powers are delegated, the directors are not liable for the exercise of those powers by the delegates (*Weir v. Bell* (1878), 3 Ex. D. 238, C.A.; 9 Digest 127, 662), but they cannot delegate the whole of their responsibilities (*Re City Equitable Fire Insurance Co., Ltd.*, [1925] 1 Ch. 407; Digest Supp.). Powers of delegation must be used *bona fide*, and directors cannot form a committee in order to exclude one or more of their number from acting (*Kyshe v. Alturas Gold Co.* (1888), 36 W.R. 496; 9 Digest 465, 3029). Where there is no provision for a quorum, the whole of the committee must meet and the committee have no power to add to their number or to supply a vacancy (*Re Liverpool Household Stores Association, Ltd.* (1890), 59 L.J. (Ch.) 616; 9 Digest 511, 3343).

Validity of acts of directors.—Cf. section 180.

Managing Director

107. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he cease from any cause to be a director.

108. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

109. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

NOTES

These articles replace article 68 of the old Table. The latter is substantially reproduced in articles 107, 108, while article 109 embodies the existing law.

Managing director.—A managing director is an ordinary director invested with special powers (*Re Newspaper Proprietary Syndicate, Ltd., Hopkinson v. Newspaper Proprietary Syndicate, Ltd.*, [1900] 2 Ch. 349; 9 Digest 533, 3517). If owing to internal dissensions the directors cannot appoint a managing director, the company may exercise the power (*Foster v. Foster*, [1916] 1 Ch. 532; 9 Digest 440, 2856). He is entitled to damages if he is removed before the expiration of the period fixed in his agreement (*Nelson v. Nelson (James) & Sons, Ltd.*, [1914] 2 K.B. 770, C.A.; 9 Digest 529, 3492), even though the company adopts new articles which gives it the power to do so (*Southern Foundries (1926), Ltd. v. Shirlaw*, [1940] A.C. 701; [1940] 2 All E.R. 445; 2nd Digest Supp.). But the appointment of a director as managing director without a specified limit of time does not entitle him to hold office as long as he remains a director, nor does an article prohibiting him from voting on a contract in which he is interested prevent him voting for his election as managing director (*Foster v. Foster, supra*).

Delegation of powers.—See note to article 102, *supra*. An article empowering directors to "appoint a general manager . . . to perform such duties as they may determine" does not enable them to delegate special powers expressly given to the directors themselves (*Cartmell's Case* (1874), 9 Ch. App. 691; 9 Digest 388, 2452).

Vacation of office.—A managing director vacates office on ceasing to be a director, even without this provision (*Bluctt v. Stutchbury's, Ltd.* (1908), 24 T.L.R. 469, C.A.; 9 Digest 529, 3491).

Secretary

110. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

111. No person shall be appointed or hold office as secretary who is—

- (a) the sole director of the company; or
- (b) a corporation the sole director of which is the sole director of the company; or
- (c) the sole director of a corporation which is the sole director of the company.

112. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

NOTE

These provisions are new and reproduce the provisions of sections 177 to 179.

The Seal

113. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

NOTE

This article replaces the old article 71. The provisions of the latter article have been modified in that no formal resolution to use the seal is now required. Its use may be authorised by the directors or by a committee authorised by the directors for that purpose (see article 102, *supra*). A duty is imposed on the directors to provide for the seal's safe custody.

Dividends and Reserve

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

115. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

116. No dividend shall be paid otherwise than out of profits.

117. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

118. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount

paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

119. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

120. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

122. No dividend shall bear interest against the company.

NOTES

These articles correspond with articles 89 to 96 of the old Table.

Articles 114 to 116 reproduce the old articles 89 to 91. As to article 116, see also the Eighth Schedule, Part I, paragraph 12, *post*.

Article 117 substantially reproduces the old article 93. It does not, however, provide for contingencies and provisions, as did the latter, these now being provided for in the Eighth Schedule, Part IV, *post*. Discretion is now given to the directors to carry forward any profits they may think it prudent not to divide without placing them to reserve.

Article 118 substantially reproduces the old article 92, but with the following modifications: (i) dividends are payable according to the amounts paid or credited as paid; (ii) amounts paid in advance of calls are not to be taken into account in any case (the words "while carrying interest" have been omitted); (iii) apportionment is provided for; (iv) if the terms of issue provide that shares shall rank for dividend as from a particular date, they rank for dividend accordingly.

Articles 119 and 120 are new.

Article 121 substantially reproduces the old articles 94 and 95. The main point of difference is that the present article provides that dividend cheques and warrants are to be sent, in the case of joint holders, to the first-named of such holders on the register.

Article 122 reproduces the old article 96.

Interim dividend.—Payment of a declared interim dividend may be postponed (*Lagunas Nitrate Co., Ltd. v. Schroeder & Co. and Schmidt* (1901), 85 L.T. 22; 9 Digest 598, 3996). See also, as to interim dividends, *Lucas v. Fitzgerald* (1903), 20 T.L.R. 16; 9 Digest 502, 3292). The payment of an interim dividend under Table A is in the discretion of the directors, whose powers cannot be usurped by the company in general meeting (*Scott v. Scott*, [1943] 1 All E.R. 582).

Dividend.—Dividends may not be paid out of capital even if the memorandum or articles purport to authorise such payment (*Trevor v. Whitworth* (1887), 12 App. Cas. 409; 9 Digest 98, 411). If by the articles dividends are payable on shares without qualifying words, this means without regard to the amount paid up on them, and the company may not pay a dividend to shareholders in proportion to the amount paid up on the shares held by them (*Oakbank Oil Co. v. Crum* (1882), 8 App. Cas. 65; 9 Digest 594, 3971). To enable a company to do so, special provision must be made in the articles, as in article 118, *supra*.

Method of payment of dividends.—In the absence of any such provision as in article 121, a shareholder may, by implication, agree to payment by cheque or warrant sent through the post (see *Thairwall v. Great Northern Rail. Co.*, [1910] 2 K.B. 509; 9 Digest 600, 4003).

Accounts

123. The directors shall cause proper books of account to be kept with respect to:—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

124. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

125. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

126. The directors shall from time to time, in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

127. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31. Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

NOTES

These articles correspond with articles 97 to 101 of the old Table. The alterations made are in consequence of the changes effected by the 1947 Act and incorporated in sections 147 *et seq.*, *ante*.

Article 123 reproduces the old article 97, except for the latter part of the present article as to books of account giving a true and fair view (*cf.* section 145 (2)).

Article 124 reproduces the old article 98, except that it also imports the proviso to section 147 (3). The article itself reproduces the substance of that subsection.

Articles 125 and 126 reproduce the old articles 99, 100, except that in the latter, sections 150 and 157 are imported, as well as section 148 (which corresponds with section 123 of the 1929 Act).

Article 127 corresponds with the old article 101. The changes made represent those incorporated in section 158.

Accounts.—See generally sections 147 *et seq.* Absent members are affected by the information furnished by the directors at a general meeting and are bound by the proceedings as to matters within its competence (*Re Norwich Yarn Co., Ex parte Bignold* (1856), 22 Beav. 143 at p. 165; 9 Digest 472, 3095).

Group accounts.—See section 150.

Capitalisation of Profits

128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

129. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

NOTE

These articles are new. They authorise the capitalisation of profits available for distribution, either by paying up amounts for the time being unpaid on shares held by members or by issuing fully paid shares or debentures in the same proportion as the members would have been entitled thereto if distributed by way of dividend. The share premium account and capital redemption reserve fund, however, may only be dealt with as provided in sections 56 (2) and 58 (5). The method whereby this capitalisation is to take place is set out in article 129, *supra*.

Audit

130. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

NOTE

This article reproduces article 102 of the old Table.

Notices

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

132. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

134. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

- (a) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

NOTE

These articles reproduce articles 103 and 105 to 107 of the old Table, except that paragraph (c) of article 134 is new. Article 104 of the old Table is not here reproduced.

Notice to auditor.—See section 162 (4).

Winding up

135. If the company shall be wound up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

NOTE

This provision is new. A similar provision was, however, frequently found in a company's special articles.

Indemnity

136. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 448 of the Act in which relief is granted to him by the court.

NOTE

This provision is new. Section 205, which, in general, avoids any provision for indemnity, allows such indemnity in the cases here specified, provided the articles so provide. This was a provision frequently found in a company's special articles.

PART II

REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY
LIMITED BY SHARES

1. The regulations contained in Part I of Table A (with the exception of regulations 24 and 53) shall apply.

2. The company is a private company and accordingly—

- (a) the right to transfer shares is restricted in manner hereinafter prescribed ;
- (b) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to fifty. Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member ;
- (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited ;
- (d) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business ; save as herein otherwise provided two members present in person or by proxy shall be a quorum.

5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

6. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported (if the directors so require) by a statutory declaration, which they may consider necessary for the purpose of determining whether or not the company is an exempt private company within the meaning of subsection (4) of section 129 of the Act.

Note: Regulations 3 and 4 of this Part are alternative to regulations 24 and 53 respectively of Part I.

NOTE

These provisions are new.

TABLE B

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED
BY SHARES

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers			Number of shares taken by each Subscriber
" 1.	John Jones of	in the county of	200
" 2.	John Smith of	in the county of	25
" 3.	Thomas Green of	in the county of	30
" 4.	John Thompson of	in the county of	40
" 5.	Caleb White of	in the county of	15
" 6.	Andrew Brown of	in the county of	5
" 7.	Cæsar White of	in the county of	10
Total shares taken			325 "

Dated the day of 19 .
 Witness to the above signatures,
 A.B., No. 13, Hute Street, Clerkenwell,
 London.

NOTE
 This Table reproduces Table B of the 1929 Act.

TABLE C

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY
 LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

Memorandum of Association

- 1st. The name of the company is "The Kent School Association, Limited."
- 2nd. The registered office of the company will be situate in England.
- 3rd. The objects for which the company is established are the carrying on a school for boys in the county of Kent and the doing all such other things as are incidental or conducive to the attainment of the above object.
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers

" 1. John Jones of	in the county of	schoolmaster.
" 2. John Smith of	in the county of	"
" 3. Thomas Green of	in the county of	"
" 4. John Thompson of	in the county of	"
" 5. Caleb White of	in the county of	"
" 6. Andrew Brown of	in the county of	"
" 7. Cæsar White of	in the county of	"

Dated the day of 19 .
 Witness to the above signatures,
 A.B., No. 13, Hute Street, Clerkenwell,
 London.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM
 OF ASSOCIATION

Interpretation

1. In these articles :—
 - " the Act " means the Companies Act, 1948.
 - " the seal " means the common seal of the company.
 - " secretary " means any person appointed to perform the duties of the secretary of the company.
 - " the United Kingdom " means Great Britain and Northern Ireland.
- Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.
- Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

Members

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.
3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 132 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, of the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"I/We _____, of _____ Limited,
_____, in the county of _____,
being a member/members
of the above named company, hereby appoint _____
of _____, or failing him
_____ of _____
as my/our proxy to vote for me/us on my/our behalf at the [annual or
extraordinary, as the case may be] general meeting of the company to be
held on the _____ day of _____ 19 _____,
and at any adjournment thereof.

Signed this _____ day of _____ 19 _____
This form is to be used *in favour of the resolution. Unless otherwise instructed,
against
the proxy will vote as he thinks fit.

* Strike out whichever is not desired."

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

31. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

32. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors shall also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

Borrowing Powers

33. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

Powers and Duties of Directors

34. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Act or these articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

35. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

36. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

37. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors ;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors ;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors ;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

Disqualification of Directors

38. The office of director shall be vacated if the director—

- (a) without the consent of the company in general meeting holds any other office of profit under the company ; or
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally ; or
- (c) becomes prohibited from being a director by reason of any order made under section 188 of the Act ; or
- (d) becomes of unsound mind ; or
- (e) resigns his office by notice in writing to the company ; or
- (f) ceases to be a director by virtue of section 185 of the Act ;
- (g) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 199 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

39. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

40. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

41. A retiring director shall be eligible for re-election.

42. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

43. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless, not less than three nor more than twenty-one days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

44. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

45. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

46. The company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

47. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 45 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

48. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

49. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

50. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

51. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

52. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

53. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

55. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

56. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Secretary

57. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

58. A provision of the Act or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

59. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts

60. The directors shall cause proper books of account to be kept with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

61. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

62. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

63. The directors shall from time to time in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

64. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company. Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures.

Audit

65. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices

66. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

67. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

- (a) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them;
- (b) every person being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Names, Addresses, and Descriptions of Subscribers

" 1. John Jones of	in the county of	schoolmaster.
" 2. John Smith of	in the county of	"
" 3. Thomas Green of	in the county of	"
" 4. John Thompson of	in the county of	"
" 5. Caleb White of	in the county of	"
" 6. Andrew Brown of	in the county of	"
" 7. Cæsar White of	in the county of	"

Dated the day of 19 "

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

NOTES

The form of memorandum given in this Table is identical with the form given in the corresponding Table of the 1929 Act. The form of articles has been amended in similar terms to those of Table A.

TABLE D

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED
BY GUARANTEE, AND HAVING A SHARE CAPITAL**

Memorandum of Association

- 1st. The name of the company is "The Highland Hotel Company, Limited."
- 2nd. The registered office of the company will be situate in Scotland.
- 3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by

“ sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object.”

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers			Number of shares taken by each Subscriber
“ 1. John Jones of	in the county of	merchant	200
“ 2. John Smith of	in the county of	“	25
“ 3. Thomas Green of	in the county of	“	30
“ 4. John Thompson of	in the county of	“	40
“ 5. Caleb White of	in the county of	“	15
“ 6. Andrew Brown of	in the county of	“	5
“ 7. Cæsar White of	in the county of	“	10
Total shares taken			325 ”
Dated the	day of	19 .	
Witness to the above signatures, A.B., No. 13, Hute Street, Clerkenwell, London.			

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is 50, but the directors may from time to time register an increase of members.

2. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1948, shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses, and Descriptions of Subscribers		
“ 1. John Jones of	in the county of	merchant.
“ 2. John Smith of	in the county of	“
“ 3. Thomas Green of	in the county of	“
“ 4. John Thompson of	in the county of	“
“ 5. Caleb White of	in the county of	“
“ 6. Andrew Brown of	in the county of	“
“ 7. Cæsar White of	in the county of	“
Dated the	day of	19 .”

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell,
London.

NOTES

The form of memorandum given in this Table is identical with that given in the corresponding Table of the 1929 Act. The form of articles is amended to conform with the new Table A, and to comply with the provisions of section 7 (2), which requires a company limited by guarantee to state in its articles the number of members with which it proposes to be registered. The latter amendment is required because of the new provisions of the Twelfth Schedule, which imposes new requirements as to fees payable on registration in the case of a company limited by guarantee which has a share capital.

TABLE E

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

Memorandum of Association

1st. The name of the company is “ The Patent Stereotype Company.”

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are “ the working of a patent method of founding and casting stereotype plates, of which method John Smith of London, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects.”

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers			Number of shares taken by each Subscriber
" 1. John Jones of	in the county of	merchant	3
" 2. John Smith of	in the county of	"	2
" 3. Thomas Green of	in the county of	"	1
" 4. John Thompson of	in the county of	"	2
" 5. Caleb White of	in the county of	"	2
" 6. Andrew Brown of	in the county of	"	1
" 7. Abel Brown of	in the county of	"	1
Total shares taken			12 "

Dated the day of

19

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is 20, but the directors may from time to time register an increase of members.
2. The share capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.
3. The company may by special resolution—
 - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe ;
 - (b) consolidate its shares into shares of a larger amount than its existing shares ;
 - (c) sub-divide its shares into shares of a smaller amount than its existing shares ;
 - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person ;
 - (e) reduce its share capital in any way.
4. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1948 (other than regulations 40 to 46 inclusive) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses, and Descriptions of Subscribers			
1. John Jones of	in the county of	merchant.	
2. John Smith of	in the county of	"	
3. Thomas Green of	in the county of	"	
4. John Thompson of	in the county of	"	
5. Caleb White of	in the county of	"	
6. Andrew Brown of	in the county of	"	
7. Abel Brown of	in the county of	"	

Dated the day of

19

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

NOTES

The form of memorandum given in this Table is identical with that given in the corresponding Table of the 1929 Act. The form of articles is amended in a similar way to that of Table D, for the same reason, namely, that section 7 (1), requires an unlimited company to state in its articles the number of members with which it proposes to be registered as well as its share capital, so that the requirements of the Twelfth Schedule as to payment of fees in the case of an unlimited company which has a share capital may be complied with. The other changes are consequent on the new Table A.

Sections 14, 454.

SECOND SCHEDULE

FORM OF LICENCE TO HOLD LANDS

The Board of Trade hereby licence the
to hold the lands hereunder described (*insert description of lands*) [or to hold lands not
exceeding in the whole acres].

The conditions of this licence are (*insert conditions, if any*).

NOTES

The Schedule reproduces Schedule II of the 1929 Act.

See section 14. The Board of Trade may, by statutory instrument, alter or add to the form here given (see section 454).

THIRD SCHEDULE

Section 30.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR
BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS
TO BE SET OUT THEREIN

PART I
FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN
THE COMPANIES ACT, 1948

Statement in lieu of Prospectus delivered for registration by
[Insert the name of the company]

Pursuant to section 30 of the Companies Act, 1948

Delivered for registration by

The nominal share capital of the company.

Divided into

£
Shares of £ each.
" £ "
" £ "
Shares of £ each.

Amount (if any) of above capital which consists
of redeemable preference shares.

The earliest date on which the company has
power to redeem these shares.

Names, descriptions and addresses of directors
or proposed directors.

Amount of shares issued

Shares

Amount of commissions paid in connection
therewith.

Amount of discount, if any, allowed on the issue
of any shares, or so much thereof as has not
been written off at the date of the statement.

Unless more than one year has elapsed since the
date on which the Company was entitled to
commence business :—

Amount of preliminary expenses

£

By whom those expenses have been paid or
are payable.

Amount paid to any promoter

Name of promoter :—

Consideration for the payment

Amount £ .

Any other benefit given to any promoter.

Consideration :—

Name of promoter :—

Nature and value of benefit :—

Consideration :—

Consideration for giving of benefit

If the share capital of the company is divided
into different classes of shares, the right of
voting at meetings of the company conferred
by, and the rights in respect of capital and
dividends attached to, the several classes of
shares respectively.

Number and amount of shares and debentures
issued within the two years preceding the date
of this statement as fully or partly paid up
otherwise than for cash or agreed to be so
issued at the date of this statement.

1. shares of £ fully paid.
2. shares upon which £
per share credited as
paid.

Consideration for the issue of those shares or
debentures.

3. debenture £

4. Consideration :—

Number, description and amount of any shares
or debentures which any person has or is
entitled to be given an option to subscribe for,
or to acquire from a person to whom they have
been allotted or agreed to be allotted with a
view to his offering them for sale.

1. shares of £ and de-
bentures of £

Period during which option is exercisable.

2. Until

Price to be paid for shares or debentures sub-
scribed for or acquired under option.

3.

Consideration for option or right to option.

4. Consideration :—

Persons to whom option or right to option was
given or, if given to existing shareholders or
debenture holders as such, the relevant shares
or debentures.

5. Names and addresses :—

Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

Total purchase price ..	£	_____
Cash ..	£	_____
Shares ..	£	_____
Debentures ..	£	_____
Goodwill ..	£	_____

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)

Date.

PART II

REPORTS TO BE SET OUT

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar ; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2.—(1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in the foregoing sub-paragraph shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar ; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) of this paragraph shall—

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate ; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate ;
or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries ; and

- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities ; or

(ii) individually with the assets and liabilities of each subsidiary ;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression " vendor " includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression " financial year " has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an

officer or servant, or a partner of or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

NOTES

This Schedule combines the Third Schedule to the 1929 Act and the Fourth Schedule to the 1947 Act, incorporating certain amendments effected by sections 67 (2) and (4), 71 (3) of that Act. These last mentioned provisions came into force on July 1, 1948.

General note.—This Schedule is the one referred to in section 30, as giving the form of statement in lieu of prospectus required in the case of a private company which alters its articles in such manner that it no longer ranks as such. Part I of the Schedule sets out the form of statement, Part II, the reports which accompany the statement in certain cases, and Part III, modifications of the requirements in Parts I and II.

Effect of changes: (i) *Redemption of preference shares.*—For the requirement in the corresponding provision of the 1929 Act that the statement in lieu must state the date on or before which these shares are or are liable to be redeemed, there must now be stated the earliest date on which the company has power to redeem these shares (*cf.* repealed s. 71 (3) of the 1947 Act).

(ii) *Payment of preliminary expenses.*—After the statement of the amount of preliminary expenses, there must also be stated by whom those expenses have been paid or are payable. There must also be stated, in addition to the amount paid to a promoter and the consideration for that payment, any other benefit given to that promoter together with the promoter's name, the nature and the value of the benefit, and the consideration therefor.

(iii) *Option to subscribe for shares or debentures.*—Where a person has an option to subscribe for any shares or debentures, or to acquire shares or debentures from a person to whom they have been allotted or agreed to be allotted for resale, there must be shown (a) the number, description and amount of the shares or debentures, (b) the period during which the option is exercisable, (c) the price to be paid, (d) the consideration for the option, and (e) the persons to whom the option was given with their names and addresses.

(iv) *Particulars of vendors.*—At the end of the entry relating to the vendors of property purchased or acquired or proposed to be purchased or acquired are entered words excepting the case where the contract for the purchase or acquisition of the property was entered into in the ordinary course of business, and there is no connection between the contract and the company ceasing to be a private company, or where the amount of the purchase money is not material.

(v) *Antecedent transactions.*—Immediately after the entries relating to the amount paid or payable for property purchased or acquired by the company, there must now be given "short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect".

(vi) *Material contracts.*—In addition to the dates and the parties to every material contract, the general nature of such contracts must also be stated, and in addition to the requirement that the time and place at which the contracts or copies thereof may be inspected, it is also provided that (a) a full memorandum of verbal contracts, and (b) a certified English translation of contracts in a foreign language must also be available for inspection.

(vii) *Rates of dividend.*—The requirement as to rates of dividend applies to the preceding five financial years instead of three years as formerly. The amendments specified in (ii) to (vii) above were effected by the Fourth Schedule to the 1947 Act.

(viii) *Reports to be set out.*—The provisions regarding reports by accountants under Part II of the Fourth Schedule which are required to be included in a prospectus issued generally, apply to a statement in lieu of a prospectus under both this Schedule and the Fifth Schedule, where in the case of such statement so delivered, any unissued shares or debentures of the company are to be applied in the purchase of a business or in the acquisition of shares of another company by reason of which that company becomes a subsidiary. It is therefore unnecessary to include this information in the statement and the requirements in the provisions of the 1929 Act which correspond with this and the Fifth Schedule as to the inclusion of such particulars were repealed and are not here reproduced. Where any such reports are set out in a statement, the statement must have endorsed thereon or attached thereto the same auditors' report as to any adjustments made and the reasons therefor as are required to be so endorsed or attached to the copy prospectus filed with the Registrar. These provisions are now largely included in Parts II and III of this Schedule, corresponding with Parts II and III of the Fourth Schedule.

Reports to be set out (paragraphs 1 and 2): Unissued shares or debentures.—Unissued shares are represented by such part of the nominal capital as has not been issued or agreed to be taken up (see also the notes generally to section 61, *ante*). Unissued debentures will include any which have not been delivered although executed by the company and stamped (*Mowatt v. Castle Steel and Ironworks Co.* (1886), 34 Ch. D. 58, C.A.; 10 Digest 765, 4791).

Part II.—The reports under this Part are analogous to those referred to in paragraphs 19 to 21 of the Fourth Schedule, *post*, in relation to a prospectus delivered for registration under section 41, *ante*. See further as to this, the notes there given.

Part III.—The provisions of this Part are analogous to those of paragraphs 27 to 30 of the Fourth Schedule, *post*. See further as to this, the notes there given.

Definitions.—"Member" (section 26); "subsidiary" (section 154); "company", "debenture", "registrar of companies" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "financial year" (section 455 (1); Fourth Schedule, Part III, paragraph 28).

FOURTH SCHEDULE

Sections 30, 38, 39, 41,
47, 417, 418, 420.MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET
OUT THEREIN

PART I

MATTERS TO BE SPECIFIED

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
3. The names, descriptions and addresses of the directors or proposed directors.
4. Where shares are offered to the public for subscription, particulars as to—
 - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - (iv) working capital; and
 - (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
5. The time of the opening of the subscription lists.
6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.
7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say—
 - (a) the period during which it is exercisable;
 - (b) the price to be paid for shares or debentures subscribed for under it;
 - (c) the consideration (if any) given or to be given for it or for the right to it;
 - (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.
8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
- 9.—(1) As respects any property to which this paragraph applies—
 - (a) the names and addresses of the vendors;
 - (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
 - (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.
- (2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—
 - (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
 - (b) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

15. The names and addresses of the auditors, if any, of the company.

16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

REPORTS TO BE SET OUT

19.—(1) A report by the auditors of the company with respect to—

- (a) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires; and
- (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by the last foregoing sub-paragraph, and in addition, deal either—
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;
 or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and
- (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or
 (ii) individually with the assets and liabilities of each subsidiary;
 and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

21.—(1) If—

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon—

- (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and
- (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-paragraph (3) of paragraph 19 of this Schedule in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

23. Every person shall for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

25. References in paragraph 7 of this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

28. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

29. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

30. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

NOTES

This Schedule corresponds with the Fourth Schedule to the 1929 Act, except as to certain amendments effected by section 61 (1), (2) and (4) and 62 (1) to (7) of the 1947 Act. These last mentioned provisions came into force on July 1, 1948.

General note.—The Schedule is the one referred to in sections 30, 38, 39, 41, 47, 417, 418, 420, as to the matters to be specified in prospectuses and reports to be set out therein. Part I deals with the matters to be specified, Part II with the reports to be set out therein, and Part III with general provisions applying to Parts I and II of the Schedule.

Effect of changes.—Part I.—(i) *The time of the opening of the subscription lists.*—This requirement is new (*cf.* repealed s. 61 (i) (a) of the 1947 Act). The subscription list may not be opened until two clear days after the prospectus is first issued (see section 50). The time of such opening is therefore material and must be stated in a prospectus to make it clear that section 50 has been complied with (paragraph 5).

(ii) *Shares or debentures under option.*—Particulars must now be given of shares or debentures under option or to be put under option including such particulars as provided for in paragraph 7, *supra*. These provisions are also adapted to offers for sale (see Part III, paragraph 25, *supra*).

(iii) *Vendors of any property purchased.*—As regards any such property purchased or acquired, or proposed to be purchased or acquired by the company as was mentioned in the 1929 Act (compare Fourth Schedule to that Act, Part I, paragraph 8; 2 Halsbury's Statutes 1041), there must now be stated short particulars of such property to be paid out of the proceeds of an issue where the transaction has been completed within two years of the issue of the prospectus in which any vendor, director, proposed director, or any promoter was or is interested, directly or indirectly (section 61 (1) (c) of the 1947 Act). These provisions will not apply in the case of particulars of the transaction set out in paragraph 9 (1) *supra*, if the contracts or amounts payable come within paragraph 9 (2), *supra* (*ibid.*, section 61 (2)).

(iv) *Purchase money payable.*—Similarly, the amounts payable under paragraph 9, *supra*, need not be disclosed if that amount is not material or if it concerns an amount or contract within the category there defined (section 61 (2) of the 1947 Act).

(v) *Preliminary expenses.*—In addition to the amount of preliminary expenses, there must now be stated information as to the persons by whom those expenses have been paid or are payable (paragraph 12).

(vi) *Amounts payable to promoters.*—The provisions of the 1929 Act (paragraph 12, Part I to the Fourth Schedule) were extended by the 1947 Act (section 61 (1)), so that now, in addition to amounts actually paid, there must be stated any benefits given within the period specified therein and the consideration for such benefit (paragraph 13).

(vii) *Disclosure of material contracts.*—The 1929 Act (paragraph 13, Part I of the Fourth Schedule) required that there be set out in a prospectus the dates of and parties to every material contract except where such contract was not a contract entered into in the ordinary course of business or a contract entered into more than two years previous to the issue of the prospectus and a reasonable time and place where such, or a copy thereof, could be inspected. That provision was amended by section 61 (1) of the 1947 Act and is here incorporated as so amended.

The effect of the change is that in addition to stating the requirements as above, there must also be set out in a prospectus the *general nature* of the contracts concerned. So much of the 1929 requirements as related to inspection were repealed by section 61 (3) of the 1947 Act, and accordingly this provision is not reproduced (but see now as to inspection of documents kept by the Registrar, section 426 (1) (b) (i)). The intention of the new requirements is to give a prospective investor some means of judging which material contracts are of most importance. A contract which must be disclosed is one which is material in the sense of being calculated to induce a person to subscribe or refrain from subscribing for shares (*Broome v. Speak*, [1903] 1 Ch. 586, C.A.; affirmed *sub nom. Shephard v. Broome*, [1904] A.C. 342; 9 Digest 105, 460). See also *Capel & Co. v. Sim's Ships Composition Co., Ltd.* (1888), 57 L.J. (Ch.) 713; 9 Digest 106, 462 (contracts in writing). Oral contracts would seem to be included (see, e.g. section 41 (1) (b)). Executed as well as executory contracts, if material, must be disclosed (*Broome v. Speak*, *supra*, at p. 600), and if the contract was material, it is no defence that the director was advised that it was not and honestly believed that it was not material (*Broome v. Speak*, *supra*) (paragraph 14).

Effect of changes.—Part II.—(viii) *Report by the auditors.*—The reports by the auditors as to the profits or losses and dividends paid by the company, are now required to relate to 5 years (instead of 3 years as formerly) as well as to the assets and liabilities at the last date to which the accounts of the company were made up. In addition, in the case of an issue by a holding company, subject to certain exceptions, the accountant's report must deal separately with the holding company's profit or loss, apart from (i) a statement of the combined profits or losses of the subsidiaries, or (ii) a statement dealing individually with the profits or losses of each subsidiary. As an alternative, the report may include a statement dealing with the consolidated profits or losses and assets and liabilities of the holding company and its subsidiaries as a whole. The report must also indicate minority interests in the profits or losses as well as the assets and liabilities (paragraphs 19 and 27).

(ix) *Purchase of a business.*—The accountants must now report upon the profits or losses of the business for the past five years as well as on the assets and liabilities at the last date to which the accounts were made up (paragraphs 20 and 27).

(x) *Purchase of shares or debentures.*—I.e. where an interest is acquired which will make that other company a subsidiary (as to the meaning of which, see section 154). These provisions apply, in effect, the same provisions as those of paragraph 20, *supra*, as regards a report by named accountants upon the company whose shares it is proposed to acquire. The report must also include a statement indicating minority interests in the assets and liabilities so dealt with as well as stating what profits or losses would have been available to the company having regard to the equity of such minority interests, that is to say, if with respect to such shares, they had been acquired at the beginning of the period to which the report relates. If the company whose shares it is proposed to acquire has subsidiaries, the provisions of paragraph 19 (3) *supra*, will apply (paragraphs 21 and 27).

Effect of Changes—Part III.—(xi) *Company entitled to commence business.*—See section 109 (paragraph 20).

(xii) *Vendor.*—The interpretations of the term “vendor” are now applied to the term as used in paragraph 9, *supra*, and will apply regardless of whether or not the prospectus was issued more than two years after the date at which the company was entitled to commence business under section 109 (incorporating section 61 (4) of the 1947 Act) (paragraphs 23, 24, 26).

(xiii) *Subscribing for shares or debentures.*—The provisions of paragraph 7 as to shares or debentures under option are also adapted to offers for sale, that is to say, disclosure must be made of any person who is given an option to subscribe for shares or debentures which the company itself has not offered but where the offer was made by or through another person who had control of the issue (paragraph 25). See also section 45.

(xiv) *Accountants' report to indicate adjustments.*—In making any report under Part II, *supra*, the accountants may make such adjustments as regards the figures set out in their report as are in their opinion necessary and they must indicate that such adjustments have been made (paragraph 29).

(xv) *Accountants qualified to report.*—Reports made by accountants under Part II of this Schedule must be made by accountants qualified under this Act (see section 161). Since auditors of exempt private companies need not be qualified, they are expressly excluded as are also persons who are debarred on the ground that they are not independent under section 161 (3) (paragraph 30).

Founders or management or deferred shares (paragraph 1).—Sometimes such shares are issued to the promoters of the company, credited as fully paid. It is not unusual in those cases for the shares to carry a voting power out of proportion to their nominal value, e.g. one deferred share can outvote the whole of the ordinary share capital in certain conditions. This might be the case where one deferred share is held by a trustee for the debenture holders, the right to exercise the vote arising where the interest on debentures is in arrear. Hence, particulars of such shares must be disclosed in the prospectus.

Directors' qualification shares and remuneration (paragraph 2).—See section 189 (as to remuneration, in another connection), and the First Schedule Table A, Part I, article 77, (qualification share). In the event of such remuneration being the subject matter of a contract, the provisions of paragraph 14 will apply.

Shares offered to the public for subscription (paragraph 4).—See also section 47, *ante*.

Minimum subscription (paragraph 4).—The intention of these provisions is to provide a safeguard to the investing public against a company going to allotment without obtaining sufficient capital to carry on. Hence, a prospectus which offers shares to the public must state the minimum amount which must be raised by the issue to provide for the purposes there specified. It is a condition precedent to such allotment that the minimum subscription be subscribed for and that the amount payable on application shall have been paid and received by the company (see section 47). As to purchase price of property, see also paragraphs 9, 10, *supra*, and as regards preliminary expenses, see paragraph 12, *supra*. (N.B.—There are no corresponding requirements in the case of an issue of debentures to the public.)

The statutory information here required may be presented, for example, in the following way:—

“Fixed Assets (with narrative)	£	80,000
Current Assets (with narrative)	£50,000	
Less Liabilities (with narrative)	£10,000	
	<u>40,000</u>	
Net assets acquired	£120,000	

“The minimum amount which, in the opinion of the directors, is required to be provided out of the proceeds of the issue for the purposes stated in the Fourth Schedule, Part I, paragraph 4, to the Companies Act, 1948, is £57,000, made up as follows: (i) cash balance of purchase consideration, £10,000; (ii) preliminary expenses and underwriting commission payable by the company, £5,000; (iii) repayment of moneys borrowed, £2,000; (iv) working capital, £40,000.

“In the opinion of the directors, the company will have sufficient working capital for the purposes of the business.”

Shares or debentures under option (paragraph 7).—This requirement may be dealt with in a prospectus under the heading “General Information” to the effect either that (i) no share or loan capital is under option or agreed to be put under option, or (ii) if there is any part of such capital under option, etc., the necessary particulars must be stated as set out in the paragraph. These provisions also apply to offers for sale (see paragraph 25 of Part III of this Schedule, *supra*).

Shares and debentures issued within two years previously (paragraph 8).—A statement of these particulars must be included in a prospectus, but if there has been no such issue, it is usual to state that fact.

Vendors and purchase price (paragraphs 9 and 10).—A statement, for example, as follows would satisfy these requirements.

"The following are the names and addresses of the vendors to the company of property purchased by the company in the previous two years and the amounts payable to them respectively.—(i) Mr. X of was the vendor to the company under contract No. 1 (see material contracts) of the assets as set out, for the sum of £50,000, satisfied by the issue as fully paid of 40,000 ordinary shares of £1 each, and the balance in cash. No part of the purchase consideration is attributable to goodwill; (ii) Mr. Y. of (a proposed director of the company) was the vendor to the company, of the plant and machinery under contract No. 2 for the sum of £5,000, payable in cash." See also paragraph 14, *supra*.

Underwriting commissions (paragraph 11).—For example, "The company has underwritten the issue of 50,000 Ordinary Shares of £1 each now offered, for a commission of 3d. per share."

Material Contracts (paragraph 14).—For example, "The following contracts (not being contracts entered into in the ordinary course of business) have been entered into within the two years preceding the date of this issue, viz. (i) Dated 10th August, 1948, between Mr. X and the company being a contract for the purchase of the fixed and current assets of for the consideration of £50,000, which purchase has been completed; (ii) a contract made orally on or about 10th September, 1948, between the company and Mr. Y of (a proposed director of the company) for the purchase by the company of plant and machinery (as separately reported upon by the valuers, Messrs. ABC) for the consideration of £3,000. This purchase has been completed; (iii) Dated 10th August, 1948, between the company and Mr. Y under which Mr. Y agrees to act as Managing Director of the company for a minimum period of 5 years from that date at a fixed salary of £1,500 per annum and a commission of 2½ per cent. on the net certified profits; (iv) Dated 10th September, 1948, between Mr. Y and Mr. Z under which the latter agrees to purchase or find purchasers for 50,000 ordinary shares of £1 each for a commission of 3d. per share."

In the case of an offer for sale, particulars of the contract concerned would also have to be disclosed in the prospectus, for example.—"Dated 10th August, 1948, between Mr. Y of the one part and E.C. Finance Corporation, Ltd. of the other part, being the agreement for the sale to the Finance Corporation of 80,000 Ordinary Shares of £1 each (offered at a premium of 2s. each), at the price of 21s. 3d. per share, etc., etc."

It is not unusual to make such contracts conditional upon the Stock Exchange granting permission to deal (see section 51).

Particulars as to the vendor to the company of shares.—Such particulars must be disclosed under the provisions of paragraph 14, *supra*. The position would be met e.g. by a disclosure on the following lines.—"The following persons were the vendors to the company of the shares in Y. Limited as regards which they were issued with shares credited as fully paid of £1 each in lieu of £1 shares (fully paid) in Y. Limited, namely, Mr. A. of 1,000 shares Mr. B. of 5,000 shares," and so on.

Auditors (paragraph 15).—Only auditors qualified under the Act are allowed to act. See Part III, paragraph 30, *supra*.

Auditors report as to dividends (paragraph 19 (1) (b)).—A report to comply with these requirements would state, for example:—

"As auditors of your company, we report that the following dividends have been paid (unless otherwise indicated) in respect of the five financial years of your company to 31st December, 1948.

Year ended 31st December	On 10,000 7 per cent. Preference Shares of £1 each Per Cent.	On 20,000 Ordinary Shares of £1 each Per Cent.
1944	7	10
1945	7	8
1946	7	5
1947	7	Nil
1948	7	20 "

Profits or losses (paragraph 19 (2) (a)).—For example:—The profits of the company for the five years ended 31st December, 1948 were as set out below. These profits were arrived at before charging Directors' Remuneration (see note A), depreciation (see note B) and income tax, but after charging all other working and administrative expenses and after making such adjustments as we consider appropriate as indicated in column 5.

1	2	3	4	5	6
Financial Years ended 31st December	Profits as defined above	E.P.T./N.D.C. or Profits Tax	Profits before Income Tax	Adjustments made (Notes A & B)	Adjusted profits before Income Tax
1944 ..	10,000	4,200	5,800	4,000	1,800
1945 ..	12,000	5,000	7,000	4,000	3,000
1946 ..	14,000	5,500	8,500	4,000	4,500
1947 ..	16,000	3,000	13,000	4,000	9,000
1948 ..	18,000	3,600*	14,400	4,000	10,400

* Estimated profits tax liability which is subject to agreement.

Note A.—The remuneration payable to directors is not chargeable at the same rate under the new company. In future, the amounts currently payable under service contracts are £3,500;

and comprise £1,250 payable each to Mr. X and Mr. Y for their services as Joint Managing Directors, and £1,000 to Mr. Z as Assistant Managing Director.

Note B.—The amount for depreciation to be applied in future on the reducing balance of the book values of the fixed assets is at the rate suggested by Messrs. ABC, which is estimated at £500 per annum.

(*N.B.*—See further as to adjustments, Part III, paragraph 29.)

Assets and liabilities (paragraph 19 (2) (b)).—For example:—“We report that the assets and liabilities of the company at the last date to which the accounts of the company were made up, were as follows:—

						£	£
FIXED ASSETS—							
Freehold Land and Buildings	..	..	..	..	..	20,000	
Plant and Machinery	..	..	..	..	..	40,000	
Fixtures and Fittings	..	..	..	..	..	5,000	
							65,000
CURRENT ASSETS—							
Stock at cost as valued by officials of the company						15,000	
Trade Debtors	..	..	..	..	..	5,000	
Cash at Bank	..	..	..	..	..	10,000	
						30,000	
Less CURRENT LIABILITIES—							
Trade Creditors	..	..	..	..	..	6,000	
Taxation Reserve	..	..	..	..	..	9,000	
						15,000	
							15,000
NET ASSETS EXCLUSIVE OF GOODWILL							£80,000 "

N.B.—If any of the items in the above summary have been re-valued, then in addition to the summary as above, the reporting accountants must set out the assets and liabilities of the company on the revised basis. For example, suppose the fixed assets were re-valued at £75,000, then the accountants would be required to state that the summary of assets and liabilities of the company at a specified date were based as regard the fixed assets on the valuation of Messrs. XYZ dated, and as to the remaining items, on the last audited Balance Sheet dated, Subject to paragraph 29, *supra*, the excess arising from such revaluation would have to be indicated in the prospectus and the figures reconciled so as to show the prospective investor what had been done, since, obviously he could not get that information from the last balance sheet. It seems, therefore, that in any event he should get an explanation, although it is not clear whether the obligation (if any) is on the directors or on the reporting accountants. The fact is clear, however, that there is an obligation to disclose that adjustments have been made (see paragraph 29, *supra*), and if these were embodied in the prospectus itself, it is suggested that the following illustration would meet those requirements:

						£
FIXED ASSETS (with suitable narrative) based on the valuation of Messrs. ABC						75,000
CURRENT ASSETS (with suitable narrative) as per last audited Balance Sheet						30,000
Less: CURRENT LIABILITIES (with suitable narrative) as per last audited Balance Sheet						15,000
						90,000
NET ASSETS EXCLUDING GOODWILL						80,000
VALUE OF THE NET ASSETS AS SHOWN BY THE LAST AUDITED BALANCE SHEET OF THE COMPANY						10,000
EXCESS OF VALUATION OF FIXED ASSETS OVER BOOK VALUE						

(*N.B.*—The valuer's report which he makes as an expert must also be included in the prospectus, and would be on the lines that he has read the prospectus and consented to his report being included in the prospectus in the form and context in which it is given (see section 40).)

Report in the case of a holding company (paragraph 19 (3)).—These requirements apply the provisions of paragraph 19 (2), *supra*. The statutory information required can be presented in any one of the four forms stated in *ibid.*, sub-paragraph (3). These requirements would be met, for example, by a report on the combined profits as follows:—

1	2	3	4	5	6	7
Year (a)	Subsidiaries		Holding Company (b)	EPT/NDC or Profits Tax	Profit attributable to minority in X Ltd.	Combined Profits of subsidiaries and Holding Company as shown in columns 2 to 4, after deducting taxation in column 5 and profits attributable to minority interests in column 6, but before charging Income Tax.
	X Ltd. (b)	Y Ltd. (b)				

Note (a).—For each of five financial years.

Note (b).—The basis of arriving at the profits must be defined, and any adjustments made must be indicated.

As to assets and liabilities.—The following is a suggested form of combined statement in order to fulfil these requirements :—

Combined Statement of Assets and Liabilities.

	X	Y	Holding Company	Total
Fixed Assets (with narrative) ..	10,000	15,000	25,000	50,000
Current Assets (with narrative) ..	6,000	5,000	15,000	26,000
	16,000	20,000	40,000	76,000
Less: Current Liabilities (with narrative)	4,000	3,000	8,000	15,000
Net Assets	12,000	17,000	32,000	61,000
Deduct: Minority interest in a subsidiary	2,000	—	—	2,000
Net Assets attributable to the Members of the Holding Company ..	10,000	17,000	32,000	59,000

Notes to combined statement of assets and liabilities.—There should be set out (i) the basis on which the assets have been valued, that is to say, at the last date to which the accounts of the subsidiaries and holding company have been made up, and (ii) re-valuations. In the latter event it would appear that differences between book values and re-valuations would have to be accounted for either in the form of statement or by way of explanatory note (see also the notes to paragraph 19 (2) (b) *supra*, for example :—

SHARE CAPITAL OF HOLDING COMPANY (showing division into classes, etc. of the issued and proposed amount of issue)	£ 35,000
CAPITAL RESERVE (described):	
X Limited	2,000
Y Limited	3,000
Holding Company	4,000
	9,000
REVENUE RESERVES (described):	
X Limited	1,000
Y Limited	1,000
Holding Company	4,000
	6,000
Excess valuation of Fixed Assets over book value	10,000
	60,000
Deduct: Excess cost of subsidiary Share Capital held by Holding Company over par value	1,000
	59,000

Purchase of a business (paragraph 20).—These requirements apply, in effect, the general rule as to the report to be made by named accountants and are analogous to those of paragraph 19 (2), *supra*. The business acquired may not, of course, be a limited company; it may, for example, be a firm consisting of a partnership of individuals. Information of the same detailed character as under *ibid.*, 19 (2) for the statutory period must, however, be disclosed as to the business acquired (see also paragraphs 27, 28, *supra*).

Acquisition of shares or debentures . . . become a subsidiary (paragraph 21).—There must be given in this case, in addition to a statement as to the profits or losses and assets and liabilities of the company concerned, an accountants' report dealing with, as it were, the notional profits and assets and liabilities. The essence of that information is that it must take into account hypothetical figures calculated on the basis that the proposed holding company had owned its interests in the "subsidiary" company throughout the statutory period to which the report relates. In effect, this would mean, for example, defining the basis on which the profits were computed, estimating tax (if different standards were applicable), assessing minority interests, making necessary adjustments for revised figures of directors' remuneration, depreciation re-valuations, and so on.

Adjustments made by the reporting accountants (paragraph 28).—The reporting accountants must indicate, for example, any adjustments he has made to the figures which will operate for the future, such as directors' remuneration, fees or percentages which have been revised under new service agreements, or the repayment of a bank overdraft out of the proceeds of an issue which will eliminate the charge for interest previously incurred. Such adjustments may, in some cases, be very lengthy, and to incorporate them in a detailed manner in the prospectus would probably not assist a prospective investor to decide whether he should put his money into the company. While it is not obligatory for the reporting accountant to explain his adjustments in the prospectus, the fact that he has made them must be indicated. A statement of the adjustments made and the reasons therefor must be filed with the Registrar of Companies (see section 41 (1) (b) (ii)), and that information is available to a prospective investor for inspection under section 426 (1) (b) (i).

Definitions.—"Share capital" (section 2 (4)); "member" (section 26); "minimum subscription" (section 47 (2)); "time of the opening of the subscription lists" (section 50 (1)); "subsidiary" (section 154); "accounts", "articles", "company", "debenture", "director", "prospectus" (section 455 (1)); "body corporate" (section 455 (3)); "financial year" (section 455 (1)); Fourth Schedule, Part III, paragraph 28, "vendor" (*ibid.*, paragraph 23); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001).

FIFTH SCHEDULE

Section 48

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR
BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT
GO TO ALLOTMENT ON A PROSPECTUS ISSUED AND REPORTS TO BE SET OUT
THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN
THE COMPANIES ACT, 1948

Statement in lieu of Prospectus delivered for registration by
[Insert the name of the company.]

Pursuant to section 48 of the Companies Act, 1948.

Delivered for registration by	
The nominal share capital of the company ..	£
Divided into	Shares of £ each.
	" " "
	Shares of £ each.
Amount (if any) of above capital which consists of redeemable preference shares.	
The earliest date on which the company has power to redeem these shares.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of £ fully paid.
The consideration for the intended issue of those shares and debentures.	2. shares upon which £ per share credited as paid.
	3. debenture £
	4. Consideration :—
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. shares of £ and debentures of £
Period during which option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option.	3.
Consideration for option or right to option.	4. Consideration :—
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses :—
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price .. £
	Cash .. £
	Shares .. £
	Debentures .. £
	Goodwill .. £

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ;
or

Rate of the commission
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.

Estimated amount of preliminary expenses.

By whom those expenses have been paid or are payable.

Amount paid or intended to be paid to any promoter.

Consideration for the payment

Any other benefit given or intended to be given to any promoter.

Consideration for giving of benefit

Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

Amount paid.
,, payable.

Rate per cent.

£ .

Name of promoter.
Amount £ .
Consideration :—

Name of promoter :—

Nature and value of benefit :—

Consideration :—

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

PART II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—
 - (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar ; and
 - (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.
 - 2.—(1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.
 - (2) If the other body corporate has no subsidiaries, the report referred to in the last foregoing sub-paragraph shall—
 - (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar ; and
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.
 - (3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) of this paragraph shall—
 - (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, and in addition deal either—
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate ; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate ;
 or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries ; and
 - (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—
 - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities ; or
 - (ii) individually with the assets and liabilities of each subsidiary ;
- and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression " vendor " includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression " financial year " has the meaning assigned to it in that Part of that Schedule.
4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.
5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.
6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who

is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

NOTES

The Schedule combines the Fifth Schedule of the 1929 Act and the Fourth Schedule to the 1947 Act, incorporating certain amendments effected by sections 67 (2) and (4), 71 (3) of that Act. The last mentioned provisions came into force on July 1, 1948.

General note.—This is the Schedule referred to in section 48, and contains the form of statement in lieu of prospectus where a company having a share capital does not issue a prospectus on or with reference to its formation, or, having issued one, has not proceeded to allot any of the shares offered to the public for subscription. Part I of the Schedule sets out the form of statement, Part II, the reports which accompany the statement in certain cases, and Part III, modification of the requirements in Parts I and II. The requirements of this Schedule are very similar in form to those of the Third Schedule.

Effect of changes.—The changes in the present Schedule are similar in form to those in the Third Schedule in regard to the following particulars: (i) redemption of preference shares; (ii) option to subscribe for shares or debentures; (iii) particulars of vendors; (iv) antecedent transactions; (v) payment of preliminary expenses; (vi) material contracts; and (vii) the reports to be set out. See generally the notes under these headings to the Third Schedule.

Parts II and III.—These provisions are analogous to those of paragraphs 19 to 21 (reports to be set out) and 27 to 30 (general provisions) of the Fourth Schedule (as to which, see the notes there given) in relation to a prospectus delivered for registration under section 41.

Definitions.—"Member" (section 26); "subsidiary" (section 154); "company", "debenture", "registrar of companies" (section 455 (1)); "body corporate" (section 455 (3)); "person" (Interpretation Act, 1889, section 19; 18 Halsbury's Statutes 1001); "financial year" (section 455 (1); Fourth Schedule, Part III, paragraph 28).

Sections 124, 454

SIXTH SCHEDULE

CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

PART I

CONTENTS

1. The address of the registered office of the company.

2.—(1) If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept.

3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars:—

- (a) the amount of the share capital of the company and the number of shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of the return;
- (c) the amount called up on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
- (g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;
- (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return;
- (i) the total number of shares forfeited;
- (j) the total amount of shares for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

4. Particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

5. A list—

- (a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;
- (b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers;
- (c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

PART II

FORM

ANNUAL RETURN of _____ Limited, made up
to the _____ day of _____, 19 _____ (being the fourteenth day after
the date of the annual general meeting for the year 19 _____).

1. Address

(Address of the registered office of the company.)

2. Situation of Registers of Members and Debenture-holders

- a) (Address of place at which the register of members is kept, if other than the registered office of the company.)
- b) (Address of any place in Great Britain other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.)

3. Summary of Share Capital and Debentures

(a) Nominal Share Capital

Nominal share capital £..... divided into:

(Insert number and class) shares of each
 shares of each
 shares of each
 shares of each

(b) Issued Share Capital and Debentures

	Number	Class	
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members).	shares
	shares
	shares
	shares
Number of shares of each class issued subject to payment wholly in cash.	shares
	shares
	shares
	shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	shares
	shares
	shares
	shares

Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	.....	.....	shares
	issued as paid up to the extent of £.... per share.	.....	shares
	issued as paid up to the extent of £.... per share.	.....	shares
	issued as paid up to the extent of £.... per share.	.....	shares
	issued as paid up to the extent of £.... per share.	.....	shares
Number of shares (if any) of each class issued at a discount.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
Amount of discount on the issue of shares which has not been written off at the date of this return.	£.....		
Amount called up on £.... per share on number of shares of £.... per share on each class.	£.... per share on	.....	shares
	£.... per share on	.....	shares
	£.... per share on	.....	shares
	£.... per share on	.....	shares
Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.	£.....		
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.	£.... on	Number Class	shares
		.....	shares
		.....	shares
		.....	shares
		.....	shares
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.	£.... on	Number Class	shares
		.....	shares
		.....	shares
		.....	shares
		.....	shares
Total amount of calls unpaid	£.....		
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures	£.....		
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return ..	£.....		
Total number of shares of each class forfeited	Number Class		shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
Total amount paid (if any) on shares forfeited	£.....		
Total amount of shares for which share warrants to bearer are outstanding	£.....		
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return.	Issued :	£.....	
Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind	Surrendered :	£.....	

4. Particulars of Indebtedness

Total amount of indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under the Companies Act, 1948, or which would have been required so to be registered if created after 1st July, 1908 £.....

5. List of Past and Present Members

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 19 , and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

Folio in register ledger containing particulars	Names and addresses	Account of Shares				Remarks
		Number of shares held by existing members at date of return *†	Particulars of shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company, by (a) persons who are still members and (b) persons who have ceased to be members‡			
			Number †	Date of registration of transfer		
				(a)	(b)	

* The aggregate number of shares held by each member must be stated, and the aggregates must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

† When the shares are of different classes these columns should be sub-divided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

Notes

1. If the return for either of the two immediately preceding years has given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

2. If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of Directors and Secretaries

Particulars of the persons who are directors of the company at the date of this return.

Name. (In the case of an individual, present Christian name or names and surname. In the case of a corporation, the corporate name)	Any former Christian name or names and surname	Nationality	Usual residential address. (In the case of a corporation, the registered or principal office)	Business occupation and particulars of other directorships	Date of birth

Particulars of the person who is secretary of the company at the date of this return.

Name. (In the case of an individual, present Christian name or names and surname. In the case of a corporation or a Scottish firm, the corporate or firm name)	Any former Christian name or names and surname	Usual residential address. (In the case of a corporation or Scottish firm, the registered or principal office)

Signed....., Director.

Signed....., Secretary.

Notes

"Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"Former Christian name" and "former surname" do not include—

- (a) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or
- (b) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or
- (c) in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Great Britain of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Dates of birth need only be given in the case of a company which is subject to section 185 of the Companies Act, 1948, namely, a company which is not a private company or which, being a private company, is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

* Delivered for filing by.....

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of every Private Company (whether an Exempt Private Company or not)

We certify that the company has not since the date of† [the incorporation of the company/the last annual return] issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed....., Director.

Signed....., Secretary.

* This should be printed at the bottom of the first page of the return.

† In the case of the first return strike out the second alternative. In the case of a second or subsequent return strike out the first alternative.

*Further Certificate to be given as aforesaid if the Number of
Members of the Company exceeds Fifty*

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under paragraph (b) of subsection (1) of section twenty-eight of the Companies Act, 1948, are not to be included in reckoning the number of fifty.

Signed....., Director.

Signed....., Secretary.

Certified copies of Accounts

Except where the company is either an exempt private company as defined by section 129 (4) of the Companies Act, 1948, which sends with this return a certificate in the form set out below or an assurance company which has complied with the provisions of section 7 (4) of the Assurance Companies Act, 1909, there must be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

*Additional Certificate to be given in the case of an Exempt
Private Company by the Persons signing the above-mentioned
Certificates*

We certify that, to the best of our knowledge and belief, the conditions mentioned in subsection (2) of section one hundred and twenty-nine of the Companies Act, 1948, are satisfied at the date of this return and have been satisfied at all times since

Signed....., Director.

Signed....., Secretary.

Banking Companies

A banking company, in order to avail itself of the benefit of s. 432 of the Companies Act, 1948, must add to this return a statement of the names of the several places where it carries on business.

NOTES

The Schedule corresponds with the Sixth Schedule to the 1929 Act, except for certain amendments effected by sections 27 (1), 52 (2), 53 (1), (6), and 74 (1) of the 1947 Act. The latter provisions came into force on July 1, 1948.

General note.—The Schedule is the one referred to in sections 124, 454, as giving the contents (Part I) and form (Part II) of annual return of a company having a share capital. The certificates to be sent by a private company (whether an exempt private company or not) as required by section 128, are also here incorporated.

Effect of changes. : (i) *Particulars of directors and secretaries.*—The annual return must now specify such particulars with respect to the secretary (as at the date of the return) as are required to be kept in the register of directors and secretaries (as to which, see section 200 (3)). Particulars as to the nationality of a director need now only relate to his *present nationality* but disclosure of *former names* must be made in certain cases (as to which, see section 200 (9)). Particulars of other directorships held must be given with the exception of directorships of companies in the same group as the company concerned, and in the case of companies which are subject to section 185, the date of birth of the director must also be given (Part II, paragraph 6).

* Insert "1st July, 1948" (the date of the commencement of the Companies Act, 1948) or, if the company was registered after that date, the date on which it was registered, or, if the proviso to s. 129 (1) of the Companies Act, 1948, has effect in relation to the return, the time at which it was shown to the Board of Trade that the conditions mentioned in the certificate were satisfied.

(ii) *Date of annual return.*—The annual return must now be dated as at the 14th day after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year (Part II, "Annual Return . . . for the year . . . 19. . ." incorporating section 52 (2) of the 1947 Act). As to time for completing the annual return for filing, see section 126.

(iii) *Place where register of members and register of debenture holders is kept.*—If the registers as above are not kept at the registered office of the company, the annual return must state the place at which they are kept (Part I, paragraph 2, and Part II, paragraph 2).

(iv) *Members' occupation.*—The annual return of a company having a share capital need not now state the occupation of the past and present members mentioned therein. The requirements of the 1929 Act as to the occupation of members were repealed by section 53 (6) of the 1947 Act, and, therefore, are not here reproduced.

(v) *List of present and past members.*—A company instead of filing a complete return of members every year, may file a complete return every third year and a list of the changes in the membership for each of the two intervening years (see section 124 (1) (c), and the Sixth Schedule, Part II, paragraph 5, *supra*).

(vi) *Signature provisions.*—The annual return forwarded to the registrar of companies for filing must be signed both by a director and by the secretary of the company (section 126 (1)).

Part II.—Form of Annual Return. Registered office (paragraph 1).—See section 107 (1).

Place where registers of members and debenture holders is kept (paragraph 2).—Section 110 (2), in certain conditions, allows the register of members to be kept at any of the company's offices where the work of compiling it is done, or, if the work is carried out by an agent, then the register may be kept at the office of the agent. A fine is imposed for any default (*ibid.*, section 110 (4)), and under *ibid.*, section 110 (3), the company must send notice to the Registrar where the register of members is kept and of any change in that place. The same provisions are applied in the case of the register of debenture holders (see sections 86, 125). As to the provisions in the case of a dominion register, see sections 119, 120.

Summary of share capital and debentures (paragraph 3).—In the case of a company having a share capital (unless the company is an unlimited company), the memorandum must state the amount of the share capital and the division thereof into shares of fixed amounts (section 2 (2)). The particulars as to nominal capital to be included in the annual return will, therefore, agree with the division of share capital as shown by the memorandum, e.g. as to preference, ordinary capital, etc. Similar particulars as to debentures are not required, and the only information here required relates to the commissions paid or discounts allowed on debentures. The only other changes to be noted to the form of presentation of the summary of share capital, etc., are perhaps greater elaboration of the particulars required, such as, for example, as to the various amounts that have been called up, or where there are shares of different kinds, provision is now made for them to be stated separately, and so on. See further as to share capital, section 61.

Certificate accompanying the return.—The first and second certificate given must be signed in all cases by every private company or exempt private company, but the additional certificate will apply only to an exempt private company. In the latter case, the wording may have to be slightly amended in the circumstances indicated in the footnote. See also the notes generally to the Seventh Schedule, and in particular, paragraphs 6, 7 and 9 thereof. It should be noted that the certificates must be signed both by a director and the secretary of the company.

Documents to be annexed to annual return.—The annual return must now include a certified true copy of every audited balance sheet and the documents required to be annexed thereto (similarly certified) laid before the company in general meeting during the period to which the return relates, together with the auditors' report thereon (see section 127, *ante*), except in the case of an exempt private company (see section 129).

Other related provisions.—Section 13 (incorporation of company); section 53 (payment of commissions and discount allowances); section 75 (registration of transfers); section 83 (share warrants); section 86 (register of debenture holders); section 95 (registration of mortgages and charges); section 110 (register of members); section 111 (index); First Schedule, Table A, Part I, articles 33 to 39 (forfeited shares).

Definitions.—"Member" (section 26); "accounts", "annual return", "company", "debenture", "director" (but see also the definition in paragraph 6, *supra*), "share" (section 455 (1)).

Sections 129, 410

SEVENTH SCHEDULE

CONDITIONS AS TO INTERESTS IN SHARES AND DEBENTURES OF EXEMPT PRIVATE COMPANY

Basic Conditions

1. The basic conditions as to the shares or debentures of the company whose exemption is in question are—

- (a) that no body corporate is the holder of any of the shares or debentures; and
- (b) that no person other than the holder has any interest in any of the shares or debentures;

but these conditions are subject to the exceptions provided for by the following paragraphs of this Schedule.

Exceptions for normal Dealings of a business Nature

2.—(1) The rules contained in the following sub-paragraphs of this paragraph shall apply for the purposes both of the basic conditions and of the exceptions from those conditions.

(2) Where any share or debenture or any interest in any share or debenture is subject to a charge in favour of a banking or finance company by way of security for the purposes of a transaction entered into in the ordinary course of its business as such—

(a) any interest under the charge, whether of the banking or finance company or a nominee for it, shall be disregarded; and

(b) if the banking or finance company or its nominee is the holder of the share or debenture, the person entitled to the equity of redemption shall be treated as the holder, whether he has a present right to redeem or not.

(3) Any interest under a contract for the transfer of any share or debenture or of any interest in any share or debenture shall, until execution of an instrument of transfer by the parties, be disregarded unless execution thereof is unreasonably delayed.

(4) Subject to sub-paragraph (2) of this paragraph, on execution of an instrument of transfer of a share or debenture, the transferee and not the transferor shall be treated as the holder, notwithstanding that the transfer requires registration with the company, unless registration is refused.

(5) Any interest of the company itself in any of its shares or debentures, and any lien or charge arising by operation of law and affecting any of the shares or debentures, shall be disregarded.

Exceptions for Cases of Death and for family Settlements

3.—(1) The basic conditions shall be subject to exceptions for—

(a) any shares or debentures forming part of the estate of a deceased holder thereof, so long as administration of his estate has not been completed; and

(b) any shares or debentures held by trustees on the trusts of a will or family settlement disposing of the shares or debentures, so long as no body corporate has for the time being any immediate interest under the said trusts other than—

(i) a body corporate established for charitable purposes only and having no right to exercise or control the exercise of any part of the voting power at any general meeting of the company;

(ii) a body corporate which is a trustee of the said trusts and has such an interest only by way of remuneration for acting as trustee thereof.

(2) For the purposes of this paragraph—

(a) the shares or debentures held by trustees on trusts arising on an intestacy shall, if the shares or debentures or an interest therein formed part of the intestate's estate at the time of his death, be treated as if the trusts arose under a will disposing of the shares or debentures;

(b) the expression "family settlement" means a settlement made either—

(i) in consideration or contemplation of an intended marriage of the settlor or any of the settlor's issue or in pursuance of a contract entered into in consideration or contemplation of any such marriage; or

(ii) otherwise in favour of any of the following persons, that is to say the settlor, his parents and grandparents, and any other individual who at the date of the settlement is a member of the company or, in the case of a settlement of debentures, a member or debenture holder of the company, and the wife or husband and issue, and the wife or husband of any of the issue, of the settlor, his parents, or any such other individual, and persons taking in the event of a failure of the issue or any class of the issue of any person taking under the settlement;

(c) the expressions "parent", "grandparent" and "issue" shall be construed as if the stepchild, adopted child or illegitimate child of any person were that person's child;

(d) any reference to a wife or husband shall include a former wife or husband and a reputed wife or husband;

(e) the expression "will" includes any testamentary disposition;

(f) any reference to a will or family settlement disposing of any shares or debentures shall include a will or family settlement disposing of an interest under another will or family settlement disposing of the shares or debentures.

Exception for Cases of Disability

4. Where the person entitled to any share or debenture or any interest in any share or debenture is of unsound mind or otherwise under any disability, and by reason thereof the share, debenture or interest is vested in an administrator, curator or other person on behalf of the person entitled thereto, then in relation to the share, debenture or interest the person in whom it is so vested and the person entitled thereto shall be treated for the purposes of this Schedule as if they were the same person.

Exception for Trusts for Employees

5. The basic conditions shall be subject to an exception for any shares or debentures held by trustees for the purposes of a scheme maintained for the benefit of employees of the company, including any director holding a salaried employment or office in the company.

Exception for Shares held by Exempt Private Companies

6.—(1) The first of the basic conditions shall be subject to an exception for shares held by another private company which is itself an exempt private company :

Provided that this exception shall not apply, if, taking all the following companies together, that is to say—

- (a) the company whose exemption is in question (hereafter in this Schedule referred to as "the relevant company") ;
- (b) any company holding shares to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company ; and
- (c) any further company taken into account for the purposes of this proviso in determining the right to be so treated of any company holding any such shares as aforesaid ;

the total number of persons holding shares in those companies is more than fifty, joint shareholders being treated as a single person and the companies themselves and (subject to sub-paragraph (4) of this paragraph) their employees and former employees being disregarded.

(2) Where the relevant company and another company hold shares in each other, the other company shall be treated for the purposes of the foregoing sub-paragraph as an exempt private company if—

- (a) in determining its right to be so treated the exception in that sub-paragraph would apply to the shares in it held by the relevant company, on the assumption that the relevant company was an exempt private company ; and
- (b) in all other respects the other company is entitled to be so treated ;

and where another company's right to be so treated depends on the application to any shares in it of that sub-paragraph, and the application thereof to those shares depends indirectly on the relevant company's right to be so treated, this sub-paragraph shall apply as if those shares were held by the relevant company.

(3) Where by virtue of this paragraph any shares are excepted from the first of the basic conditions, the second of those conditions shall be subject to an exception for any interest in those shares which any person has by virtue of debentures of the company holding those shares, or as trustee of a deed for securing an issue of debentures of that company.

(4) In the proviso to sub-paragraph (1) of this paragraph, the direction that employees and former employees of the companies shall be disregarded in computing the number of shareholders shall not apply to a person holding shares in a company of which he is not for the time being an employee unless, having been formerly in the employment of that company, he held, while in that employment, and has continued after the determination of that employment to hold, shares in that company.

Exception for Banking or Finance Company providing Capital

7.—(1) The first of the basic conditions shall be subject to an exception for any shares or debentures held by or by a nominee for a banking or finance company, where the banking or finance company acquired the shares or debentures or its interest therein in the ordinary course of its business as such and by arrangement with the relevant company or its promoters :

Provided that this exception shall not apply if the banking or finance company has the right (or, where there is more than one such company holding shares or debentures to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company, they have between them the right) to exercise or control the exercise of one fifth or more of the total voting power at any general meeting of the relevant company.

(2) Where by virtue of the foregoing sub-paragraph any shares or debentures are excepted from the first of the basic conditions, the second of those conditions shall be subject to an exception for the banking or finance company itself, where the shares or debentures are held by a nominee for it, and for any interest in those shares or debentures which any person has by virtue of debentures of the banking or finance company or as trustee of a deed for securing an issue of debentures of that company.

Exceptions for Bankruptcies, Liquidations, etc.

8. The basic conditions shall be subject to exceptions for—

- (a) any shares or debentures forming part of the assets in a bankruptcy or liquidation of a holder thereof ; and

- (b) any shares or debentures held either—
 (i) on trusts created for the benefit of his creditors generally by a person having an interest therein; or
 (ii) otherwise for the purposes of any composition or scheme made or approved under any Act by a court or an officer of a court for arranging the affairs of such a person.

Meaning of "banking or finance company"

9. In this Schedule the expression "banking or finance company" means any body corporate or partnership whose ordinary business includes the business of banking and any other body corporate whose ordinary business includes the business of lending money or of subscribing for shares or debentures, except that it does not include any such other body corporate unless either—

- (a) its shares are quoted or dealt in on a recognised stock exchange; or
 (b) it is designated for the purposes of this paragraph by order of the Board of Trade; or
 (c) it is a subsidiary of a body corporate whose shares are so quoted or dealt in or which is so designated.

NOTES

The Schedule reproduces Schedule III to the 1947 Act, which came into operation on July 1, 1948.

General note.—This Schedule contains the bulk of the conditions which have to be satisfied by a private company in order to qualify as an exempt private company under section 129. The conditions contained in this Schedule are those referred to in subsection (2) of that section. These conditions are two in number:—

- (i) that no body corporate is the holder of any of the company's shares or debentures; and
 (ii) that no person other than the holder has any interest in any of the shares or debentures (paragraph 1, *supra*).

The principle behind these provisions is that the exempt private company should be limited to the genuine family business (see generally the notes to section 129). However, to avoid anomalies, considerable exceptions have been made to the generality of these two conditions. It is these exceptions which make up the bulk of the Schedule.

Basic conditions.—See section 129 (2).

Rules apply for purposes both of basic conditions and exceptions.—I.e. the provisions of this paragraph must be read as qualifying the basic conditions, as well as providing for exceptions thereto. For example, the interpretation of "holder" in sub-paragraph (2) (b) will apply to the basic conditions, as well as to the exceptions. The same is true of each of the remaining sub-paragraphs.

Security in ordinary course of business (paragraph 2 (2)).—The exception under this paragraph applies only where the holder of the shares, etc., has charged them by way of security for a loan granted by the banking or finance company in the ordinary way of its business as a banking or finance company. This is the distinction between this paragraph and paragraph 7, which applies where the banking or finance company has provided the company itself with capital. In the present case, although the banking, etc., company may actually hold the shares in its name or in that of a nominee, the holder of the equity will be regarded as the true owner. This will apply equally for the purposes of the basic conditions as for the exceptions thereto. For example, if the person entitled to the equity of redemption is itself a body corporate (not exempt under this Schedule), then the first basic condition will not have been complied with, although the shares are registered in the name of a banking company which has acquired them in the ordinary course of its business as such, a factor which would otherwise have brought the transaction within the exception in this paragraph.

Interest under a contract (paragraph 2 (3)).—A transfer of shares will not be regarded as affecting these provisions, either for the purpose of the basic conditions or the exceptions thereto, until the execution of the instrument of transfer, unless the execution is unreasonably delayed. This last proviso will prevent an undue delay of the execution of the transfer in order to obtain exemption.

Instrument of transfer.—See section 75; First Schedule, Table A, Part I, article 22.

Paragraph 2 (4).—It should be noted that this sub-paragraph is subject to sub-paragraph (2), *supra*. This sub-paragraph deals with the period between the execution of the transfer and the date of registration of the transferee as holder. It is made clear that, during this period, the transferee is to be regarded as the holder, unless and until the company refuses registration.

Paragraph 2 (5).—See First Schedule, Table A, Part I, articles 11 to 14. The mere fact that a company has such an interest or lien will not disqualify it for exemption under section 129.

Shares forming part of estate of deceased holder pending administration.—This provision is necessary, since executors may be registered as shareholders (see note to section 76), although the beneficiaries under the will, who are not registered as holders, have an interest in the shares or debentures. Again, during the period between the death of a member and the registration of his personal representatives as holders, some person other than the holder will have an interest in the shares or debentures. As to shares held on trusts arising on an intestacy, see further paragraph 3 (2) (a).

Body corporate established for charitable purposes.—A company will not lose its status as an exempt private company, if some of its shares or debentures are held by a charitable corporation, providing that corporation is not able to exercise or control the exercise of any voting rights in the company.

Interest by way of remuneration as trustee.—If the shares are held by a trustee company on behalf of other persons, the company may, in law, have an interest in the shares if it has a right to charge remuneration for its work as trustee. This provision now secures that a company should not lose its exemption on the ground that a body corporate holding as trustee has, for the time being, an immediate interest under the trust in so far as it can charge remuneration.

Trusts arising on intestacy.—An exception is already provided for shares or debentures held on the trusts of a will or family settlement (see paragraph 3 (1) (b), *supra*), so long as no body corporate has for the time being (and with certain exceptions), any immediate interest under the trust. A similar exception is now extended to the case of shares or debentures held by trustees on a trust arising on an intestacy. If, for example, a person dies leaving minor children, the administration of the estate would be held on trust until the children come of age. This fact will not, however, prevent the exemption operating.

Trusts for employees.—One of the basic conditions which an exempt private company has to satisfy is that no person other than the holder has any interest in any of the shares or debentures. This paragraph now provides an exception for shares held by a trustee under a scheme for the benefit of employees, e.g. a pension scheme.

Shares held by exempt private company.—Paragraph 6 provides, in effect, that a company should not be disqualified from being an exempt private company merely because some of its shares are held by another exempt private company. Where, however, shares are held, for example, in X. Co. by Y. Co. and Z. Co., both exempt private companies, X. Co. will not rank as an exempt private company if the total number of shareholders in X, Y and Z companies exceeds 50, which is the total number of members permitted for a private company under section 28. In both cases, an exception is made in favour of employees and former employees. In the present case, however, this is subject to paragraph 6 (4), *supra*, which provides that only those ex-employee shareholders should be left out of account who were shareholders while they were still employees and have continuously remained shareholders since their retirement (*cf.* section 28 (1) (b)).

The following further examples illustrate some of the principles involved :—

Example 1.—X holds shares in Y. Y is the relevant company (i.e. the company whose exemption is in question). Y is exempt if X is, provided the total number of shareholders in both companies are not more than 50.

Example 2.—X holds shares in Y, and Y holds shares in Z. Z is the relevant company. Z is exempt if X and Y are exempt, provided again the total number of shareholders is not more than 50. If Y in the first example, and Z in the second example were companies with more than 50 debenture holders in each case, then neither Y nor Z would be an exempted company, since, apart from the exceptions as to shares held by exempt private companies, the other requirements must also be fulfilled in order to enjoy the privilege of exemption. The result is that though X and Y may be exempt companies, Z may not be.

Example 3.—X and Y hold shares in each other. Applying the normal rule, X is exempt if Y is, and Y is exempt if X is. Taking X as the relevant company, it would appear that Y is to be treated as an exempt private company for the purposes of deciding X's right to be so treated.

Example 4.—X, Y, and Z all have cross-holdings of shares in each other. Applying the general rule, the right of any one company to be treated as exempt will depend directly on the company who holds its shares being exempt, and *indirectly* on the third company also being exempt, although the latter company is not itself a shareholder in it. In such case, special provision is made as to applying the 50 member rule in determining the right of the relevant company to be treated as an exempt company to have the shares of the third company (i.e. the indirect company) applied as if they were the shares held by the relevant company. The effect is to treat the holding of the "indirect" company in the "other" company as if it were held by the relevant company. For example, X holds shares in Y. Y holds shares in Z, and Z holds shares in X. Y is the relevant company, X is the "other" company, and Z is the "indirect" company. Therefore, in determining Y's right to be treated as exempt, the shareholding of Z in X will be treated as held by Y, so that the result is that only two companies are taken into consideration in applying the 50 member rule.

Company whose exemption is in question.—It should be noted that companies qualifying for exemption fall into two categories : (i) Companies which fulfil all the necessary conditions on July 1, 1948. These companies are automatically exempt. (ii) Companies which do not fulfil the necessary conditions on July 1, 1948, but do so at a later date. These companies do not become automatically exempt on fulfilling those conditions. Where such a company claims that it is entitled to exemption, it must apply to the Board of Trade, and the Board, if satisfied that the necessary conditions have now been complied with, may grant exemption. Until the Board has granted such exemption, however, the company must file its accounts in the same way as other non-exempt companies. It will be noted that the proviso to section 129 (1) makes provision for a modified form of certificate when such exemption has been granted.

Trustee of a deed for securing an issue of debentures.—See section 88. Although one of the basic conditions is that no person other than the holder may be interested in the company's shares or debentures, this does not preclude the debentures being held by the trustee for the debenture holders instead of by the debenture holders themselves.

Bankruptcies and liquidations.—If a shareholder is adjudicated bankrupt, the trustee in bankruptcy will have an interest in the shares of the bankrupt. The trustee, however, may never be registered as the shareholder, and even if he is, there is bound to be an interval before he is registered. During that interval he, although not then the holder of the shares, will have an interest in them. It is therefore provided that in such case and in similar cases, e.g. where an exempt private company which is a shareholder in another exempt private company is in liquidation or where an individual shareholder executes a deed of arrangement in favour of his creditors, it will not affect the exemption.

Banking or finance companies providing capital (paragraph 7).—The important provision to note in this case is the voting power exercisable by the banking or finance company, as the case may be. If it is 20 per cent. or more of the total voting power at any general meeting of the relevant company, the latter company will lose its right to be treated as an exempt private company.

Designated by Board of Trade.—A banking or finance company whose shares are not quoted or dealt in on a recognised stock exchange, will not be automatically designated under paragraph 9 (b) by the Board of Trade. Application must be made to the Board of Trade by a company which desires that it should be so designated.

Definitions.—"Private company" (section 28); "exempt private company" (section 129); "subsidiary" (section 154); "company," "debenture," "director," "prescribed stock exchange," "share" (section 455 (1)); "family settlement," "grandparent," "husband," "issue," "parents," "wife," "will" (Seventh Schedule, paragraph 3 (2)); "banking or finance company" (*ibid.*, paragraph 9); "person" (Interpretation Act, 1890, section 19; 18 Halsbury's Statutes 1001).

EIGHTH SCHEDULE

Sections 56, 149,

152, 157, 454

ACCOUNTS

PRELIMINARY

1. Paragraphs 2 to 11 of this Schedule apply to the balance sheet and 12 to 14 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part II of this Schedule in the case of a holding company and by Part III thereof in the case of companies of the classes there mentioned; and this Schedule has effect in addition to the provisions of sections one hundred and ninety-six and one hundred and ninety-seven of this Act.

NOTES

GENERAL NOTE

The Eighth Schedule (which corresponds with Schedule I to the 1947 Act) has no counterpart in the 1929 Act, except in unconnected references scattered through that Act dealing with the accounts provisions. These as extended or modified (and in some cases repealed) by the 1947 Act, have been conveniently brought together in the present Schedule which is now (except where specifically indicated below) comprehensive in that respect.

Accounts—preliminary.—The Schedule elaborates the following sections of the Act, viz., 56 (share premiums); 149 contents and form of accounts; 152 (group accounts); 157 (directors' report); 454 (Board of Trade's power to alter or add to tables and forms). Below are summarised the provisions of the 1929 Act which have been amended by the 1947 Act, and which are now incorporated in the present Schedule. The latter provisions came into force on July 1, 1948.

1929 Act		1947 Act	1948 Act
Section	Subject	Section	Eighth Schedule unless otherwise stated
44 (1)	Commissions on shares and discounts on debentures	53	Part I, paragraph 3.
45 (2)	Financial assistance to buy shares and loans to directors	35	Section 190: and Part I, paragraph 8 (1) (c).
46 (2)	Capital Redemption Reserve Fund	71, 72	Part I, paragraph 2 (see also section 58).
47 (3)	Discount on shares	—	Part I, paragraph 3.
54 (1)	Interest on capital	120 (3)	Part I, paragraph 2.
—	Share premiums	72	Part I, paragraph 2. See also section 56.
75 (3)	Re-issue of debentures	—	Part I, paragraph 2.
124	Contents of balance sheet ..	First Schedule	Generally, the Eighth Schedule. See also sections 149 to 154. As to the provisions in the case of holding companies, see Part II to the Eighth Schedule, and for the exceptions thereto, see <i>ibid.</i> , Part III.
125	Shares in subsidiary company (<i>N.B.</i> —Sections 126, 127 of the 1929 Act were repealed by the 1947 Act, section 123)	do.	do.
128 (1), (2), (4)	Loans to officers (<i>N.B.</i> —Section 128 (3), (5) of the 1929 Act was repealed by section 123 of the 1947 Act)	Section 39	Section 197.

Additions to the provisions of the 1929 Act by the 1947 Act:—

Remuneration of auditors.—See section 159 (7), (which incorporates 24 (8) of the 1947 Act.

Date to be stated for redeeming redeemable preference shares.—In addition to stating in a balance sheet the provisions of paragraph 2 (a), *infra*, the particulars must also be given in a statement in lieu of prospectus (see Third Schedule, and Fifth Schedule, incorporating section 71 (3) of the 1947 Act).

Share premiums.—The amount of the share premium account must be shown separately (applying section 72 (2) of the 1947 Act. See also section 56, *ante*).

Directors' remuneration, pensions, etc.—See section 196. It should be noted that the provisions of section 128 (3), (5) of the 1929 Act were repealed by section 123 of the 1947 Act.

Directors' report.—See section 157.

Exceptions and modifications.—The exceptions and modifications as to the accounts requirements of Part I of this Schedule are dealt with in Part II (special provisions for holding and subsidiary companies), Part III (excepted companies), and it should be noted that under section 454, the Board of Trade has power to alter forms, etc., by regulations.

Contents of balance sheet.—The Act defines in terms the records to be kept by a company (see section 147). These must be sufficient to show the true financial picture (*ibid.*). The same principle prevails in the case of the annual accounts of the company, i.e. the balance sheet and profit and loss account (see sections 149, 152). The expression "annual accounts" is not used in the Act, but is used by the authors as an omnibus term to include the balance sheet, profit and loss account, the auditors' report thereon, and the directors' report, or in the case of group accounts, the holding company's balance sheet and profit and loss account, and except as otherwise provided by section 151 (2), (3), a consolidated balance sheet and a consolidated profit and loss account, the auditors' report thereon, the directors' report, and where applicable, the directors' statement of profit or loss of the subsidiaries and other statements (see the Eighth Schedule, Part II, paragraph 21, *infra*).

The balance sheet must now contain, not only a summary of the authorised share capital (see paragraph 2, *infra*), but also suitable grouping of the assets and liabilities according to their general nature (*ibid.*). Fixed assets must be distinguished from current assets (paragraph 4 (2)), and there must be stated how the value of the fixed assets and investments have been arrived at (paragraphs 4, 5, 8 (1) (a), (3), 11 (8)). Current assets which have not the value stated must be indicated (paragraph 11 (7)). Special provision is made in the case of conversion of foreign currencies (paragraph 11 (9)), and the disclosure of the basis on which income tax has been computed is now made statutory (paragraph 11 (10)). With an exception in the case of first accounts after July 1, 1948, comparative figures for the previous period must be given (paragraph 11 (11)). Further, particulars of capital and revenue reserves, including movements, must be separately stated (paragraphs 6, 7), as well as secured liabilities (paragraphs 9, 10), charges on assets (paragraph 11 (4)), the general nature of contingent liabilities (*ibid.*, 11 (5)), and appropriate notes as to capital expenditure not provided for (*ibid.*, 11 (6)). Loans authorised for the purchase of the company's shares as provided for by section 54 (1) (b), (c), and bank loans must also be separately stated (paragraph 8 (1) (c), (d)). Except in the case of interests in subsidiaries (for which special provisions are made in Part II, *infra*), it will be noted that it is now compulsory to show investments of the company's funds under separate headings for quoted and unquoted investments respectively, with a further sub-division into trade investments and other investments (paragraph 8 (3)). Such particulars must also conform with certain other requirements (see paragraph 11 (8)). The inclusion in the balance sheet of dividends recommended for payment and arrears of fixed dividends is now a statutory requirement (paragraphs 8 (1) (e), 11 (3)), but it should be noted the former must be specified after the deduction of income tax, while in the latter case, gross amounts must be shown, except in the case of tax free dividends, to which a special provision is applied (*ibid.*). (N.B.—The deduction of income tax will be reflected in the income tax computation charged in the profit and loss account (see paragraph 12 (1) (c)).

Fixed assets.—Section 124 (1) of the 1929 Act merely required that fixed assets should be stated in the balance sheet showing the manner in which they had been arrived at. It was sufficient for that purpose to give an omnibus heading and to describe the basis of arriving at the value by stating, for example, "at cost less depreciation" without indicating what the cost was or how much depreciation had been written off.

Those provisions have now been superseded by the requirements of this Schedule, and the changes to note are, in effect, that such assets must now show at cost (or valuation), and separately therefrom the depreciation, etc., until disposed of. The procedure is explained in greater detail in the following notes:—

Method of arriving at amount of fixed assets.—The normal rule to be adopted is laid down in paragraph 5 (1), *infra*. It is there provided that a fixed asset must show either at cost or the amount of valuation, as the case may be, and separately therefrom the aggregate depreciation, etc., provided up to the date of the balance sheet. The annual amount of such provision must be separately shown in the Profit and Loss Account (paragraph 12 (1) (a)), *infra*, or otherwise as provided for in paragraph 14 (2), *infra*, having regard to paragraph 5 (4) *infra*. The effect thereof is to show the cost, etc., of the asset separately from the depreciation deducted (paragraph 5 (3)), unless the accounting treatment is dealt in some other way, as provided for *infra*.

Modification of the normal rule as above regarding fixed assets acquired before July 1, 1948.—If the above method were not modified, a difficult problem to companies might arise in some cases, for example, where a company's records were inadequate to enable it to segregate the necessary information as required by paragraph 5 (3), *infra*. For instance, in the case of a merger, it might be extremely difficult to trace the original cost of a fixed asset. Provision is therefore made for a company to use as its starting figure the net book value of the asset at July 1, 1948, as representing the value of the asset concerned for the purposes of satisfying these provisions. This figure will also be the starting figure for showing deductions for depreciation, and the aggregation thereof as required by *ibid.*, paragraph 5 (3) will commence as from that date. The proviso to paragraph 5 (1), *infra* would have the effect in the case of subsequent sales, of reducing the book value to an equivalent extent, although it is thought that any element of profit or loss on the sale, if ascertainable, should be indicated. See also paragraph 14 (2), *infra*, which has a bearing on the question of depreciation.

Fixed assets acquired after July 1, 1948.—The normal rule will apply, but it should be noted that two exceptions are made in the conditions set out in paragraph 5 (2), *infra*. In the first

instance, (*ibid.*, (2) (a)), it may be a difficult or expensive process to ascertain the cost of a particular fixed asset. In such cases, provided the circumstances there given apply, the normal rule for stating the amount of a fixed asset (see paragraph 5 (1), (3), *infra*) need not be adopted, but instead the item concerned may be included with an asset as provided for in paragraph 4 (1) (b), *infra*.

Renewal of fixed assets.—Paragraph 5 (2) (b) makes provision for the case where, for example, the fixed asset concerned shows at an initial cost or valuation, that is to say, deduction for depreciation has not been made therefrom, and in lieu thereof, the cost of replacement has been charged to revenue or where the system of accounting is to create a renewals provision account which is held available for having charged thereto the cost of replacements. If this method of accounting is adopted, the provisions of *ibid.*, paragraph 5 (4) must be complied with. Presumably the intention of the Act here is to guard against the possibility of undisclosed reserves being created without the facts there required being disclosed which otherwise might be the case. See also paragraph 14 (2), *supra*, which has a bearing on the question of renewals or replacements.

Over provision in relation to fixed assets before July 1, 1948.—See Part IV, paragraph 27, *infra*.

Investments.—The normal rule is excluded in this case (see paragraphs 5 (2) (c), 8 (1) (a), (3), 11 (8), *infra*).

Goodwill, patents, trade marks.—The normal rule does not apply (see paragraphs 5 (2) (d), 8 (1) (b), (2), *infra*).

Current assets.—The term is used in place of “floating assets”, the term used in the 1929 Act. Such assets must be distinguished from fixed assets and must also be appropriately classified (see paragraphs 2, 4 (2), *infra*). Further, if they have not a value *at least* equal to the value at which they are stated, a duty is imposed on the directors to indicate that fact (see paragraph 11 (7)). The Schedule does not require the basis of valuation to be stated, presumably for the reason that they are self evident, although it will be noted from what was previously said (*ibid.*), that a statement is required in the event of their value being less than that stated. This requirement emphasises the importance of the paramount principle prevailing when presenting accounts which is that they must show the true financial position of the company. The items which would appear to call for special consideration in this respect are:—

Stock.—The primary responsibility for the valuation of this item is upon the directors (see *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331; on appeal, [1896] 2 Ch. 279, C.A.; 9 Digest 500, 3280). It is submitted that the principle indicated in paragraph 14 (6) (b), *infra*, must obviously be applied in such matters (apart from the requirements of paragraph 11 (7), *infra*), since a basis of valuation not consistently maintained may distort the results. In practice this would probably mean a note on the balance sheet to the effect that the trading results have been affected by reason of the basis of valuation having been varied from that adopted in the previous balance sheet, the net effect being an increase (or decrease, as the case may be) of a stated amount in the trading result. Where an amount is provided, for example, against deterioration, the amount thereby provided should show separately as a deduction from the asset, and if it is in excess of what is required for that purpose it must be dealt with as indicated in Part IV, paragraph 27 (2).

Work in progress.—In the case of companies engaged on manufacturing, this item is usually substantial and the important point to note here is that if the method of computing its value is varied from one period to another, the effect can be to diminish or increase the true profit figure. Accordingly, the requirements of paragraph 14 (6) (b), *infra*, should be noted in that respect.

Sundry debtors.—If the true value of this asset is not equal at least to its book value, a duty is imposed on the directors to state what, in their opinion, it is worth. In practice, a deduction is separately stated for bad and doubtful debts represented by such diminished value.

The implication in the provisions of paragraph 11 (7), *infra*, seems to be that directors must act reasonably and honestly in making reserves which they consider expedient for the purposes of implementing those requirements. They are not required, of course, to say anything if it is their belief that the current assets are fully of the value stated, that is to say, as to each item comprised under that heading, and not the aggregate thereof. While admittedly this is a matter for the discretion of the directors, the auditor would be in duty bound to report to the shareholders if he thought that that discretion was not being honestly exercised, for his duty is to ascertain and state the true financial position of the company (see *Squire, Cash Chemist, Ltd. v. Ball, Baker & Co.* (1911), 106 L.T. 197, C.A.; 1 Digest 433, 1243. See also 5 Halsbury's Laws (2nd Edn.) 385, 386; Magnus and Estrin on the Companies Act, 1947, p. 136).

Investments.—Investments held for trading purposes are now to be treated as fixed assets as opposed to other investments held as part of the liquid resources of the company, which are included among the current assets (paragraph 4 (2), *infra*). For other related provisions, see paragraphs 5 (2) (c), 8 (1) (a), 11 (8), *infra*. These new provisions will assist in a better appreciation of the worth of the investments, since shareholders will readily see the aggregate surplus or deficit on the balance sheet values at the date of that balance sheet. As to investments in subsidiary companies, see Part II, paragraph 15.

Goodwill, patents or trade-marks.—Section 124 (2) (c) of the 1929 Act was not clear as to whether goodwill should be stated in the balance sheet separately from patents, etc. The wording of paragraph 8 (1) (b), (2), *infra*, makes it clear that these items need not be separately stated, but may be shown under a composite heading.

PART I

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

Balance Sheet

2. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified—

- (a) any part of the issued capital that consists of redeemable preference shares, and the earliest date on which the company has power to redeem those shares;

- (b) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid ;
- (c) the amount of the share premium account ;
- (d) particulars of any redeemed debentures which the company has power to reissue.

3. There shall be stated under separate headings, so far as they are not written off—

- (a) the preliminary expenses ;
- (b) any expenses incurred in connection with any issue of share capital or debentures ;
- (c) any sums paid by way of commission in respect of any shares or debentures ;
- (d) any sums allowed by way of discount in respect of any debentures ; and
- (e) the amount of the discount allowed on any issue of shares at a discount.

4.—(1) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business :

Provided that—

- (a) where the amount of any class is not material, it may be included under the same heading as some other class ; and
 - (b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.
- (2) Fixed assets shall also be distinguished from current assets.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5.—(1) The method of arriving at the amount of any fixed asset shall, subject to the next following sub-paragraph, be to take the difference between—

- (a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation ; and

(b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value ; and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) The foregoing sub-paragraph shall not apply—

- (a) to assets for which the figures relating to the period beginning with the commencement of this Act cannot be obtained without unreasonable expense or delay ; or
- (b) to assets the replacement of which is provided for wholly or partly—
 - (i) by making provision for renewals and charging the cost of replacement against the provision so made ; or
 - (ii) by charging the cost of replacement direct to revenue ; or
- (c) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note ; or
- (d) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown—

- (a) the aggregate of the amounts referred to in paragraph (a) of that sub-paragraph ; and

(b) the aggregate of the amounts referred to in paragraph (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (b) of this paragraph, there shall be stated—

- (a) the means by which their replacement is provided for ; and
- (b) the aggregate amount of the provision (if any) made for renewals and not used.

6. The aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings :

Provided that—

- (a) this paragraph shall not require a separate statement of any of the said three amounts which is not material ; and
- (b) the Board of Trade may direct that it shall not require a separate statement of the amount of provisions where they are satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

7.—(1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)—

(a) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived ; and

(b) where—

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year ; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof ; the application of the amounts derived from the difference.

(2) Where the heading showing any of the reserves or provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

8.—(1) There shall be shown under separate headings—

(a) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments ;

(b) if the amount of the goodwill and of any patents and trademarks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be ;

(c) the aggregate amounts of any outstanding loans made under the authority of provisos (b) and (c) of subsection (1) of section fifty-four of this Act ;

(d) the aggregate amount of bank loans and overdrafts ;

(e) the net aggregate amount (after deduction of income tax) which is recommended for distribution by way of dividend.

(2) Nothing in head (b) of the foregoing sub-paragraph shall be taken as requiring the amount of the goodwill, patents and trademarks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments other than trade investments shall be sub-divided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a recognised stock exchange.

9. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

10. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11.—(1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say—

(a) the period during which it is exercisable ;

(b) the price to be paid for shares subscribed for under it.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(7) If in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(8) The aggregate market value of the company's quoted investments, other than trade investments, where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(9) The basis on which foreign currencies have been converted into sterling, where the amount of the assets or liabilities affected is material.

(10) The basis on which the amount, if any, set aside for United Kingdom income tax is computed.

(11) Except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and Loss Account

12.—(1) There shall be shown—

- (a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets ;
- (b) the amount of the interest on the company's debentures and other fixed loans ;
- (c) the amount of the charge for United Kingdom income tax and other United Kingdom taxation on profits, including, where practicable, as United Kingdom income tax any taxation imposed elsewhere to the extent of the relief, if any, from United Kingdom income tax and distinguishing where practicable between income tax and other taxation ;
- (d) the amounts respectively provided for redemption of share capital and for redemption of loans ;
- (e) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves ;
- (f) subject to sub-paragraph (2) of this paragraph, the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof ;
- (g) the amount of income from investments, distinguishing between trade investments and other investments ;
- (h) the aggregate amount of the dividends paid and proposed.

(2) The Board of Trade may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with sub-paragraph (1) (f) of this paragraph, if the Board is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

13. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression " remuneration ".

14.—(1) The matters referred to in the following sub-paragraphs shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for United Kingdom income tax is computed.

(4) Whether or not the amount stated for dividends paid and proposed is for dividends subject to deduction of income tax.

(5) Except in the case of the first profit and loss account laid before the company after the commencement of this Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material respects in which any items shown in the profit and loss account are affected—

- (a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature ; or
- (b) by any change in the basis of accounting.

NOTES

Authorised and issued share capital (paragraph 2).—A full summary of the capital of the company must be given, that is to say, the nominal or authorised amount with which the company was registered and its division into shares indicating the denomination of each class of share ; the issued capital, that is, the amount subscribed for. If all the issued capital has not been called up, then the amount of called-up capital must be shown, and if the amount per share called up has not been paid in every case, then the calls in arrear should be shown as a deduction from the called-up capital. The difference between the issued capital and the called-up capital represents the uncalled capital. Forfeited shares or surrendered shares (see the First Schedule, Table A,

Part I, article 35), are not a cancellation of capital, and consequently it is only necessary to adjust the issued share capital accordingly. *Seem*, in order to comply with Table A, it would be necessary to indicate on the balance sheet the fact that the forfeiture was made by directors' resolution, etc. The amount paid on the shares forfeited would show as a separate item on the balance sheet. A company, if so authorised by its articles may pay interest on moneys paid in advance of calls under section 59 (see also the First Schedule, Table A, Part I, article 21), and if calls are in arrear, have power to charge interest (*ibid.*, article 18). Such interest, whether receivable or payable will not show in the summary of capital, since the interest payable is in the nature of a liability, and therefore should be included under that heading if unpaid at the date of the balance sheet. Credit for interest receivable is usually taken when actually received. As to shares for which a person has an option to subscribe, see paragraph 11 (2), *supra*.

Redeemable preference shares.—It should be noted that the provisions of section 46 of the 1929 Act have been widened so as to provide that the sums set aside for shares to be redeemed need only be for the nominal amount of those shares and not as formerly for the amount applied in redeeming the shares (see section 58). Such redemption will not amount to a reduction of the authorised share capital (*ibid.*).

Capital redemption reserve fund.—This fund may only be created out of the profits which would otherwise be available for dividend. The fund may be applied to redeem preference shares or in payment of unissued shares to be issued as fully paid bonus shares (see section 58). Further, the fund is to be treated as part of the paid up share capital of the company (*ibid.*).

Share premium account.—Any premiums received on the issue of shares must be transferred to this account, which must be treated as if it were paid up share capital of the company. The share premium account may be applied (i) in paying up unissued shares to be issued as fully paid bonus shares; (ii) in writing off preliminary expenses or expenses, commissions and discounts on any issue of shares or debentures; (iii) in providing for the premium payable on redemption of redeemable preference shares or debentures. These provisions, in certain conditions, are retrospective (see section 56). A share premium account, by implication, is a capital reserve (see Part IV of this Schedule, *infra*).

Debentures.—See section 90. As to debentures held by nominees, see paragraph 10, *supra*. See also the notes on "secured liabilities", *infra*.

Preliminary expenses and expenses of issue (paragraph 3).—These provisions reproduce the 1929 Act, section 124 (2) (paragraph 3 (a), (b)). These expenses may be written off against share premium account (see notes, *supra*). See also the First Schedule, Table A, Part I, article 6.

Discount on shares or debentures.—These provisions correspond with section 44 (1) of the 1929 Act (paragraph 3 (d), (e)). See also section 57, *ante* (power to issue shares at a discount). There are no corresponding provisions in the Act dealing with the issue of debentures at a discount. In practice authority for so doing is given in the Articles, although as already stated Table A, makes no such provision.

Classification under headings appropriate to the company's business (paragraph 4).—See notes under heading "Contents of balance sheet", *supra*. The terms "reserves", "provisions", are defined in Part IV, *infra*. See also paragraphs 6, 7, *supra*.

Secured liabilities.—A general indication must be given of the fact that the liability is secured, for example, "Loan by XYZ, £5,000 (secured by the issue of £6,000 3 per cent. Debentures)", but there is no need to specify the assets on which the liability is secured (see paragraph 9, *supra*). See also paragraph 11 (4), *supra* (in another connection).

Current liabilities.—The general provision for classification under headings appropriate to the company's business, *supra*, applies. It should be noted that the term "current liabilities" is not used in the Schedule, and therefore, as such has no legal significance. There is, however, in effect a definite obligation imposed under these regulations suitably to classify the liabilities of the company under proper headings, and presumably the intention here is to indicate clearly the nature of the liability concerned. For that purpose and also for the sake of clarity, liabilities which are currently payable according to their nature should be shown under a heading such as this. In particular, it should be noted that bank loans and dividends recommended for distribution (see paragraph 8 (1) (d), (e)) as well as arrears of fixed dividends (see *ibid.*, 11 (3)), and British income tax (see *ibid.*, 11 (10)) must be shown under separate headings. It is thought, however, that any income tax which is an estimate of future liability should be shown as a separate item under "reserves".

Sundry creditors.—By implication, it would seem that these are restricted to liabilities which are actual or accrued, and currently payable. On this basis, they should not include reserves or provisions within the meaning of Part IV of this Schedule, *infra*, since under paragraphs 6, 7, *supra*, these must be shown separately.

Presentation of capital and revenue reserves for balance sheet purposes (paragraphs 6, 7).—The paragraphs specifically mean "reserves" and "provisions" within the meaning of the definitions given in Part IV of this Schedule. The expressions "depreciation", "renewals", "diminution in value of assets" are therefore not used in this sense. Those provisions and the related accountancy treatment are dealt with in some other way (see paragraph 5, *supra*). The Schedule is not concerned with the reason for making a particular reserve (whether capital or revenue) or provision, but it imposes a statutory obligation to disclose the fact that one exists. In that respect the general rule under paragraph 4 (1), *supra*, is applied. It is not provided that all reserves and provisions, irrespective of the amounts concerned, should be disclosed, but only material amounts. What are material amounts for the purposes of statutory disclosure is, of course, a question of fact. Obviously, any reserve or provision brought into the accounts which would have the effect of distorting the results should be disclosed, and accordingly, the provisions require disclosure of *movement* of a reserve or a provision (i.e. as to any sums withdrawn or introduced, with appropriate narrative) as well as their *existence*. It should be noted that disclosed reserves are of two kinds: (1) those of a revenue nature, which generally consist of sums set aside or withheld from profits, and which are free for distribution, and (2) capital reserves, such as for example, capital redemption reserve fund (see section 58), which is not free for distribution. These must be distinguished and shown separately in the balance sheet. The requirements of this paragraph tie up with those relating to the information to be disclosed in the profit and loss account (see paragraph 12 (1) (e) (f), *supra*).

The following examples illustrate some of the principles involved :—

Ref.	Period—Year	Example 1 (DR)	Example 2 (DR)	Example 3 (DR)	Example 1 (CR)	Example 2 (CR)	Example 3 (CR)
A	Beginning provision ..	—	—	—	10,000	10,000	10,000
B	Amount applied	3,000	15,000	—	—	—	—
C	Amount set aside ..	1,000	—	—	—	12,000	5,000
D	Balance retained	6,000	7,000	15,000	—	—	—
		10,000	22,000	15,000	10,000	22,000	15,000

Example 1.—A exceeds B and D. Disclosure must, therefore, be made under the rule (paragraph 7 (1) (b) (ii)). The difference to be accounted for is A minus (B plus D) = C (C will, in any event, show in the profit and loss account) and apparently only D need be disclosed in the balance sheet.

Example 2.—A does not exceed B and D (*ibid.*) and *semble* an anomaly arises here as to disclosure. The rule (*ibid.*) is that disclosure must be made only if A exceeds B and D, but presumably *not if the position is reversed* (i.e. B and D exceeding A). If that is so, there would be no need to reconcile the opening and closing figures. This would not apply to reserves (*ibid.*, (1) (b) (i)).

Example 3.—D shows an increase as compared with A (see paragraph 7 (1) (a)). Only the *source* (not the amount) requires to be disclosed. C will show in the profit and loss account in any event (paragraph 12 (1) (e)).

Exceptions as to the disclosure of reserves and provisions.—See paragraph 6 (b), *supra* (which to a limited extent ties up with paragraph 12 (2), *supra* (in the case of the profit and loss account)). It will be noted that the Board of Trade must be satisfied that disclosure is against the interests of the company as well as in conflict with the public good.

Contracts for capital expenditure (paragraph 11 (6)).—This provision envisages commitments which have been entered into and which have neither been declared nor provided for. The shareholders should know how their money is to be spent in the future.

Quoted investments.—Investments in the nature of trade investments are not included in these provisions since they are dealt with separately (see paragraphs 5 (2) (c), 8 (1) (a)). In all other cases, excluding investments in subsidiaries (as to which, see Part II of this Schedule, *infra*), if it is thought that stock exchange quotations are not a fair basis of valuation, these provisions will apply. (N.B.—the normal rule is for quoted investments to show at book value with a note as to market value (see paragraph 5 (2) (c), *supra*). For the provisions as to *unquoted investments*, see paragraphs 5 (2) (c), 8 (1) (a), 11 (7), *supra*).

Profit and loss account (paragraph 12).—(For meaning see section 149 (7) (b).)

While the balance sheet is normally regarded as the all important document indicating, as it were, the value of a business in terms of capital, surpluses, liabilities and assets, the profit and loss account indicates a company's capacity to earn profits. Under section 123 (1) of the 1929 Act, there was no guidance whatsoever as to the information which a profit and loss account should contain, and in practice, it seldom contained more than the minimum disclosure, usually being confined, for example, to a brief statement of "profits, dividends, less management expenses, taxation, and debenture interest", and perhaps separately therefrom "depreciation", "appropriation to reserves", and "dividends paid". This does not imply, of course, that the information was not true or that it was misleading, but rather that it was uninformative to shareholders. The reason for this state of affairs was that the Act of 1929 did not make it incumbent to state how the profits had been arrived at or what the true earnings of the company were.

Those provisions were superseded by the 1947 Act, First Schedule, with which the present Schedule corresponds. The new provisions lay down the contents of the profit and loss account and indicate the general outline, without attempting a standardised form, that matter being left to the companies themselves.

While it will be noted from these provisions that the profit and loss account need not show trading figures (for example, of turnover, purchases, staff wages, etc.), it must contain certain other information as there provided, and in particular, it should be noted that abnormal and extraneous profits, including transfers to and from reserves or provisions must, *inter alia*, show separately from the other items (see paragraphs 12 (1) (d), (e), (f), 14 (6), *supra*).

Depreciation.—The Schedule would imply a distinction between depreciation, renewals and diminution of value of fixed assets.

The principle of depreciation implies that profits have been set aside or withheld to provide for the renewal of the fixed asset at the end of its life. This is not necessarily the same thing as stating that it is a provision for recouping the initial financial outlay incurred, since it may mean something more. In that sense there is a difficulty so far as this is concerned, to know whether the basis of providing depreciation should be the cost of the asset as shown by the books or the cost of renewing it, whatever that may be, in the future. If this is the principle to be followed, it would be necessary to provide for a figure of capital cost not merely to the extent of recouping the cost of the asset, but the higher cost of replacing it when that time comes. This interpretation would appear to be consistent with the provisions of Table A, which provides that no dividend shall be paid otherwise than out of profits (see the First Schedule, Table A, Part I, article 116), and it follows that true profits cannot be arrived at unless factors such as these are taken into account. There is also the general obligation that the annual accounts must always show the true financial picture (see section 149).

Renewals.—The provision should be read with paragraph 5 (2) and (4), *supra*. The accounting principle here is that the original cost of the asset appears in the balance sheet and the cost of renewals is charged either (i) direct to revenue, or (ii) to a provision for renewals account. The amount of the latter account will have been built up by an accounting process of annual sums set aside from revenue for that purpose. This treatment would, it is thought, presuppose renewals or replacements and not additions of new items, since the Act speaks of "replace-

ments" which are provided for (see paragraph 5 (2) (b) *supra*), while *ibid.*, sub-paragraph (4) serves to clarify that treatment. It would seem, therefore, that the addition of new items should be taken to the balance sheet. These provisions do not apply to maintenance expenditure.

Diminution in value of fixed assets.—These words were probably inserted to include any provision made that is not, or has not, the same characteristics as depreciation or provision for renewals in the generally understood sense of those terms, and where, but for its inclusion in the Schedule, something might be left out of the accounts which ought to be disclosed. For example, obsolescence by its very nature, although similar perhaps in ultimate effect, differs in some degree from depreciation. The latter term implies something of a slow process, that is, an annual provision to renew a fixed asset at the end of its life. The term "obsolescence" is based on rather different considerations, such as, for example, provision for the cost of a new manufacturing process which may become obsolete through supersession by new and improved methods so that the first process becomes redundant.

Income Tax (paragraph 12 (1) (c)).—In effect, the requirements are that the *charge* for British taxation must show separately as well as the basis on which it is computed. Normally, the method is to provide for a reserve for tax on the profits for the period covered by the accounts, which means that an estimate has to be made for an amount which the company is likely to have to pay. That is one method, but a company may choose to reserve for tax with reference to the profits of the preceding year, or with reference to the fiscal year. Whichever method is adopted (and the different methods have by no means been exhausted in the previous examples), both the amount and the basis on which it is computed must be shown. It is interesting to note that the liability to tax is related not only to profits, but to allowances as well, and the provisions of the Income Tax Act, 1945, have an important bearing in that respect, particularly with respect to the disparity between the depreciation written off in the books and the allowances for "wear and tear" and "initial allowance". The expression "other taxation" used in the context will include profits tax (here too, the basis on which it is computed must be stated), property tax (Schedule A), tax deducted from interest payments, and tax suffered on dividends or interest received. The provision as to relevant details regarding income tax and other taxation is qualified by the words "where practicable", although it should be noted that any element of that amount which is a reserve for future taxation must show separately by virtue of the provisions relating to reserves (as to which, see Part IV of this Schedule).

Redemption of share capital (paragraph 12 (1) (d)).—See section 58.

Transfers of reserves and provisions (paragraph 12 (1) (e), (f)).—Table A, Part I, article 117 (see the First Schedule), empowers directors to set aside out of the profits of the company such sums as they think proper as reserves. There is now a statutory obligation to disclose under separate headings any material sums introduced into the profit and loss account from reserves or provisions made in previous periods, or of sums set aside either to a new reserve or provision or as an addition to an existing one (see however, paragraph 12 (2)). This requirement ties up with the existence and use (i.e. increase or decrease) of such reserve or provision under paragraphs 6, 7, *supra*. For a definition of the terms "reserve", "provision", see Part IV of this Schedule.

Dividends (paragraph 12 (1) (h)).—See the First Schedule, Table A, Part I, articles 114 to 122. See also paragraphs 8 (1) (c), 14 (4), *supra*. It would seem that the latter provision is inconsistent with the former provision, since the first authority requires the amount of dividend recommended to be stated net.

Auditors' remuneration (paragraph 13).—As to when the auditors' remuneration is not fixed by the company, see section 159 (7). It would appear that payment to auditors for work not related to the audit need not be disclosed.

Transactions not usually undertaken by the company (paragraph 14 (6) (a)).—I.e. of any material expenses, losses, profits or receipts which are either abnormal or extraneous to the ordinary transactions of the company.

Changed accounting basis (paragraph 14 (6) (b)).—I.e. of accounting principles from year to year which would have the effect of distorting results as between the years. For example, where the basis of valuing work-in-progress had changed, the effect might be to distort the profits, and apart from this, there would not be a true basis of comparison for the preceding year (as to which, see paragraph 14 (5), *supra*).

PART II

SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY

Modifications of and Additions to Requirements as to Company's own Accounts

15.—(1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and—

(a) the references in Part I of this Schedule to the company's investments shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(b) paragraph 5, sub-paragraph (1) (a) of paragraph 12, and sub-paragraph (2) of paragraph 14 of this Schedule shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company

nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing—

- (a) the reasons why subsidiaries are not dealt with in group accounts ;
- (b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—
 - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company ; and
 - (ii) for their previous financial years since they respectively became the holding company's subsidiary ;
- (c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—
 - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company ; and
 - (ii) for their other financial years since they respectively became the holding company's subsidiary ;
 so far as those profits are dealt with, or provision is made for those losses, in the company's accounts ;
- (d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members ;

or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable :

Provided that the Board of Trade may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this sub-paragraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (b) and (c) of the last foregoing sub-paragraph shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—

- (a) the company is itself the subsidiary of another body corporate ; and
- (b) the shares were acquired from that body corporate or a subsidiary of it ;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(6) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company—

- (a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company ; and
- (b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

16.—(1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

Consolidated Accounts of Holding Company and Subsidiaries

17. Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

18. Subject as aforesaid and to Part III of this Schedule, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

19. Sections one hundred and ninety-six and one hundred and ninety-seven of this Act shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

20. Paragraph 7 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

- (a) sub-paragraphs (2) and (3) of paragraph 15 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and
- (b) there shall be annexed the like statement as is required by sub-paragraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

22. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by sub-paragraph (6) of paragraph 15 of this Schedule where there are no group accounts.

NOTES

Group accounts.—The provisions of Part I of this Schedule are not wholly applicable where group accounts are concerned, and have been modified to some extent as provided for by this Part of the Schedule. Further exceptions are also provided for in the case of certain classes of companies, and such instances are dealt with in Part III of the Schedule. The Board of Trade also have power to modify the requirements in certain cases (see section 152 (3), 454 (1)). Whatever the form of presentation of the accounts of holding companies, the general principle prevails that they must give a true and fair view of the state of the affairs of the group as a whole as well as of its profits and losses (see section 152). As to the general provisions of this Act dealing with group accounts, see sections 150 to 153, and for the meaning of “holding company” and “subsidiary company”, see section 154.

The provisions of this Part of the Schedule supersede those of sections 125 to 127 of the 1929 Act, the latter two provisions having been repealed by section 123 of the 1947 Act and the Ninth Schedule, Part I, thereto, while the first mentioned section was considerably strengthened by the First Schedule, Part II, to the 1947 Act as regards the particulars to be given with respect to subsidiaries. The provisions of the 1947 Act (which are here incorporated) came into force on July 1, 1948.

Application of these provisions.—These provisions apply to fellow subsidiaries of another body corporate as defined by paragraph 16 (2), *supra*, as well as to sub-subsidiaries (*N.B.*—the term “subsidiary” now includes “sub-subsidiary” (see section 154 (paragraph 15 (1))).

Holding company's investments comprising shares or indebtedness to and from a subsidiary (paragraph 15 (2)).—In general, these provisions do not apply in the case of a holding company's own balance sheet. The effect is that the cost of the shares and the indebtedness to and from the subsidiary concerned must show as a separate item in the holding company's own balance sheet (paragraph 15 (2)). See, however, paragraph 21, *supra*.

Nominee holdings (paragraph 15 (3)).—These provisions tie up with the definition of membership of a holding company given in section 154, and accordingly it is now necessary to disclose any such holdings as provided for (paragraph 15 (3)).

Statements required if group accounts are not submitted (paragraph 15 (4)).—It will be noted that in general separate information as to subsidiaries is not required by these provisions if consolidated accounts are published (see paragraph 17, *supra*). Where, however, group accounts are not submitted, other equivalent information must be given to the shareholders of the holding company at the same time as the holding company's own accounts are being presented, (see section 150). While the Act allows group information to be presented other than by the method of consolidated accounts (see *ibid.*), such as for example, by the submission of the individual accounts of all the subsidiaries (*ibid.*), the position might be most confusing to the shareholders and might possibly not give them a true and fair view as required by section 152. Accordingly, it is provided that if group accounts are not presented, certain supplementary information must also be given, the effect of which is to explain to the holding company's shareholders the true position of their holdings in the total enterprise with respect to the profits or losses, that is, of the group as a whole viewed as a single undertaking. In the ordinary way, consolidated accounts should be submitted (see section 150), but there may be genuine cases where such a course would not be desirable, for example, foreign subsidiaries which are subject to exchange restrictions, and so on. In those cases, the reason for non-inclusion of such subsidiaries must be given (see paragraph 15 (4) (a), *supra*). Special provisions are also made as to the basis of conversion of foreign currencies in those cases (see paragraph 11 (9), *supra*).

Where group accounts are not submitted, then certain other information must be given. This in effect means (1) a summary of the profits after deducting the losses (or *vice versa*) of the subsidiaries not dealt with in the holding company's own accounts, so far as concerns its members for (a) the period covered by the accounts as well as for (b) previous periods, and (2) the relevant amount of the profits or losses, as the case may be, dealt with or for which provision is made in the holding company's accounts for (a) and (b) respectively (paragraph 15 (4) (b), (c)). In this way, the shareholders of the holding company obtain a picture of the earnings of their subsidiaries, the extent to which they have been dealt with (for example, by way of dividends paid), and the amount of profits retained by the subsidiary.

The effect of the words “so far as it concerns members of the holding company” (see paragraph 15 (4) (b)), means that the interest of minority shareholders in the capital, reserves, and undistributed profits of the subsidiary must be taken into account. It would not appear

that such interests would have to be shown as a specific deduction (as to profits) in the statement referred to previously, although, of course, it would have to be calculated and worded to be included as a separate item in the balance sheet of the holding company.

Pre-acquisition profits or losses (paragraph 15 (5)).—The effect of these provisions, *inter alia*, is that a holding company must not treat as its revenue for distribution purposes those profits earned by a subsidiary before the acquisition of such shares, and conversely, losses prior to acquisition must be treated as capital losses. This rule will not apply in the case of an acquisition of a company which is not outside the group, that is with respect to shares changing hands within the same group (paragraph 15 (5)). In certain cases, the apportionment of profits or losses must be on a time basis (*ibid.*). In practice, these provisions may cause difficulty, particularly in the case of minority interests in a holding company which has not previously prepared consolidated accounts, and where the shares in the subsidiary company were acquired very many years ago. If in such case there were undistributed profits at the date of the acquisition of the shares, there is by implication the statutory obligation to calculate the profit or loss, as the case may be, attributable to the period prior to the date the shares were acquired.

Inter-company indebtedness (paragraph 16).—These provisions relate to a subsidiary's indebtedness on debentures and otherwise (to be distinguished between), as well as the total indebtedness of such other companies to itself. The provisions will also apply to fellow subsidiaries (paragraph 16 (1)).

Fellow-subsidary.—For example, X Ltd., and Z Ltd., are both subsidiaries of Y Ltd., but the first two companies are not subsidiaries of each other. For the purposes of these provisions, however, they will be regarded as fellow subsidiaries, and the debts between them must be aggregated as already explained previously (paragraph 16 (2)).

Consolidated accounts (paragraph 17).—The general rule is that a consolidated balance sheet and profit and loss account must be issued in addition to the holding company's own balance sheet (see generally sections 150, 151). The information to be contained in a consolidated balance sheet is similar with certain modifications to that relating to a balance sheet in the case of a single company, and in particular must contain a summary of the authorised and issued share capital of the holding company and of the reserves, provisions, liabilities and assets of the holding company and its subsidiary companies, but with such adjustments as the directors of the holding company think necessary. The information, in the case of the holding company, will be relevant to the date of its own balance sheet, and in the case of the subsidiary companies, at the same date or prior dates at which their balance sheets have been drawn up (see paragraph 22, *supra*, which applies paragraph 15 (6) (b), *supra*). It should be noted that the provisions as to the presentation of consolidated accounts are also subject to the exceptions stated in Part III of this Schedule. If the balance sheets of any subsidiaries have not been included in the consolidated balance sheet, then paragraph 21, *supra*, will apply. As regards a consolidated profit and loss account, with the exception of showing particulars of directors' salaries, pensions, etc. (see paragraph 19, *supra*), the account, in effect, will show the aggregate earnings of the holding company and its subsidiaries so far as concern the members of the holding company. The information to be shown in a consolidated profit and loss account, subject to the modifications and additions referred to in this Part of the Schedule, will generally be the same as that in the case of the profit and loss account of a single company (as to which see paragraphs 12 to 14), but with such adjustments as the directors of the holding company think necessary. It should also be noted that consolidated accounts must be reported upon by the auditors as provided for in the Ninth Schedule. In a case where any subsidiary's profit and loss account has not been consolidated, the provisions of paragraph 21, *supra*, will apply. It would appear that the words "consolidated balance sheet . . . shall combine the separate information contained in the balance sheets . . . of the subsidiaries . . ." would mean, *inter alia*, that the names of all the subsidiaries whose figures have been consolidated should be disclosed.

Adjustments which the directors of the holding company think necessary (paragraph 17).—In the case of the consolidated balance sheet, this would include, for example: (i) taking into account the interest of minority shareholders in the capital of the subsidiary company, its reserves, profits or losses; (ii) adjustments for the cost of inter-company holdings and their par value, and taking account therein of undistributed profits at the date the shares in question were acquired. In the case of the consolidated profit and loss account, adjustments will be necessary, for example, in connection with (i) eliminating inter-company profits; (ii) the interests of minority shareholders of the subsidiaries in the consolidated results.

PART III

EXCEPTIONS FOR SPECIAL CLASSES OF COMPANY

23.—(1) A banking or discount company shall not be subject to the requirements of Part I of this Schedule other than—

(a) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except sub-paragraph (1) (d)), paragraphs 9 and 10, and paragraph 11 (except sub-paragraph (8)); and

(b) as respects its profit and loss account, those of sub-paragraph (1) (h) of paragraph 12, paragraph 13 and sub-paragraphs (1), (4) and (5) of paragraph 14; but, where in its balance sheet capital reserves, revenue reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account such a reserve or provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The accounts of a banking or discount company shall not be deemed, by reason only of the fact that they do not comply with any requirements of the said Part I from

which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) In this paragraph the expression "banking or discount company" means any company which satisfies the Board of Trade that it ought to be treated for the purposes of this Schedule as a banking company or as a discount company.

24.—(1) In relation to an assurance company within the meaning of the Assurance Companies Acts, 1909 to 1946, which is subject to and complies with the requirements of those Acts as respects the preparation and deposit with the Board of Trade of a balance sheet and profit and loss account, the foregoing paragraph shall apply as it applies in relation to a banking or discount company, and such an assurance company shall also not be subject to the requirements of sub-paragraphs (1) (a) and (3) of paragraph 8 and sub-paragraphs (4) to (7) and sub-paragraph (10) of paragraph 11 of this Schedule:

Provided that the Board of Trade may direct that any such assurance company whose business includes to a substantial extent business other than assurance business shall comply with all the requirements of the said Part I or such of them as may be specified in the direction and shall comply therewith as respects either the whole of its business or such part thereof as may be so specified.

(2) Where an assurance company is entitled to the benefit of this paragraph, then any wholly owned subsidiary thereof shall also be so entitled if its business consists only of business which is complementary to assurance business of the classes carried on by the assurance company.

(3) For the purposes of this paragraph a company shall be deemed to be the wholly owned subsidiary of an assurance company if it has no members except the assurance company and the assurance company's wholly owned subsidiaries and its or their nominees.

25.—(1) A company to which this paragraph applies shall not be subject to the following requirements of this Schedule, that is to say—

(a) as respects its balance sheet, those of paragraph 4 (except so far as the said paragraph relates to fixed and current assets) and paragraphs 5, 6 and 7; and

(b) as respects its profit and loss account, those of sub-paragraph (1) (a), (e) and (f) of paragraph 12;

but a company taking advantage of this paragraph shall be subject, instead of the said requirements, to any prescribed conditions as respects matters to be stated in its accounts or by way of note thereto and as respects information to be furnished to the Board of Trade or a person authorised by them to require it.

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I of this Schedule from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) This paragraph applies to companies of any class prescribed for the purposes thereof, and a class of companies may be so prescribed if it appears to the Board of Trade desirable in the national interest:

Provided that, if the Board of Trade are satisfied that any of the conditions prescribed for the purposes of this paragraph has not been complied with in the case of any company, they may direct that so long as the direction continues in force this paragraph shall not apply to the company.

26. Where a company entitled to the benefit of any provision contained in this Part of this Schedule is a holding company, the reference in Part II of this Schedule to consolidated accounts complying with the requirements of this Act shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far only as they apply to the separate accounts of that company.

NOTES

General note.—This Part exempts a banking or discount company (as defined in paragraph 23 (3)) from the requirements of Part I of the Schedule, with the exception of the matters stated in *ibid.*, sub-paragraph (1) (a) and (b). Such companies are also exempted from disclosing their reserves provided they indicate by appropriate words the manner in which they have been arrived at (*ibid.*), but the obligation always to show the true picture remains (paragraph 23 (2)). Exemption from certain requirements as to accounts is allowed to an assurance company and its subsidiaries or nominees in certain conditions, and the Board of Trade have power to give directions in that respect (paragraph 24). The Board of Trade also have power to grant other concessions as to accounts to any company prescribed by them for that purpose. A company taking advantage of those concessions will be subject to the conditions imposed by the Board of Trade or by other persons so authorised by it. The accounts, in whatever form they are presented, must always give a true and fair view of the company's position. Finally, the Board of Trade may withdraw the privilege if the company has not complied with the conditions imposed on it (paragraph 25). This privilege is also extended to any consolidated accounts of a company coming within this provision, if it is a holding company (paragraph 26).

The purposes of paragraphs 25 and 26 is to widen the range of companies which, in the national interest, it is desirable to have exempted from the full disclosure requirements which ordinarily apply to the affairs of a company. This need will arise only if it is in the national interest and *not* merely in the interests of the company or its shareholders. It might apply, for example, to certain classes of shipping companies. It would appear that the Board of Trade when exercising its powers need not give any reason with respect to granting or withdrawing the privilege.

PART IV

INTERPRETATION OF SCHEDULE

27.—(1) For the purposes of this Schedule, unless the context otherwise requires,—

- (a) the expression “provision” shall, subject to sub-paragraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;
 - (b) the expression “reserve” shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;
 - (c) the expression “capital reserve” shall not include any amount regarded as free for distribution through the profit and loss account and the expression “revenue reserve” shall mean any reserve other than a capital reserve;
- and in this paragraph the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

- (a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or
 - (b) any amount retained by way of providing for any known liability;
- is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

28. For the purposes aforesaid, the expression “quoted investment” means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, or on any stock exchange of repute outside Great Britain, and the expression “unquoted investment” shall be construed accordingly.

NOTES

General note.—Apart from the provisions applicable in the case of banking and other exempted companies (as to which, see Part III of this Schedule), *ibid.*, Part I provides, *inter alia*, that undisclosed reserves or provisions are not allowed (see paragraphs 4, 6, 7, 12, *supra*). This Part of the Schedule defines the terms there used so as to determine whether a reserve is free (i.e. a revenue reserve), or not (i.e. a capital reserve), or is a provision for depreciation, etc., or a provision against a possible liability, the amount of which cannot be ascertained with substantial accuracy. A definition is also given of the terms “quoted investment”, “unquoted investment”.

Provision (paragraph 27 (1) (a) and (2)).—An amount which is a reasonable estimate of a known “liability” (which expression is also here defined) is not a provision within the meaning of the term here stated. Therefore, any such item should be included with the liabilities on the balance sheet. For example, an accrual for telephone charges where the exact amount is not known at the date of the balance sheet, but which can be reasonably estimated is not a provision as here envisaged, and the item would therefore be included with any other accrued charges at that date. In a specific sense, a provision is an amount (not being an amount in excess of that which in the opinion of the directors is reasonably necessary for that purpose (see paragraph (2), *supra*)) written off for depreciation, renewals or diminution in value of assets (but not as to any such amounts written off in relation to fixed assets before July 1, 1948) (*ibid.*), or it may be so described if one cannot foretell the amount of the liability for which it is provided with substantial accuracy at the date of the balance sheet. The latter may be for contingencies of various natures which may or may not mature to the extent for which provision has been made. Where provisions have been made for contingencies, that is to say, where the amounts concerned cannot be reasonably estimated, then it seems clear, subject to the qualification mentioned later in these notes, that the provision made, unlike a revenue reserve, is not part of the company's surplus available for distribution. The reason would appear to be (a) in the case of a provision for a known liability, that it is subject to a claim, and (b) in the case of depreciation, etc., it represents the amount written off a fixed asset over the period of its working life (see also the notes on “depreciation”, *et seq* to Part I, paragraph 12 (1) (a), *supra*). It should be noted, however, that there may be cases where inadvertently there has been over provision, and special provision is made in those cases except as to any amounts written off, etc., in relation to fixed assets before July 1, 1948. But for this provision, the object of these requirements might have been defeated in that secret reserves could be created, which is a situation the Act desires to avoid, and it is not certain that secret reserves do not exist in the case where the true value of a fixed asset is not equivalent to the amount shown in the books at July 1, 1948 (see paragraph 5 (1), *supra*, which permits the net book value of assets at July 1, 1948, to be treated as the amount of their value at that date). In general, the requirements as to over provisions would work in this way. For example, if a company provides £2,000 for a known liability, the amount of which at that time could not be determined with reasonable accuracy, and the claim as ultimately met was for £500, then under these regulations, the excess of £1,500 must be treated as a revenue reserve. Accordingly, the transfer of that item to revenue reserve becomes subject to the disclosure requirements of the Act in all respects both as to its existence and movement (see Part I, paragraphs 6, 7, 12 of this Schedule, *supra*).

Reserve (paragraph 27 (1) (b)).—The term as here defined denotes something in the nature of a surplus excluding, however, any amount which can be properly regarded as a provision as defined in paragraph 27 (1) (a), *supra*, but subject, nevertheless, to the declaratory provisions

of *ibid.*, sub-paragraph (2), *supra*. For example, a reserve may be in the nature of realised or unrealised surpluses of fixed assets as well as amounts set aside through the profit and loss account for general purposes. Reserves are of two kinds (see paragraph 27 (1) (c), *supra*).

Capital and revenue reserves (paragraph 27 (1) (c)).—A capital reserve will include any amount which is not available for distribution through the profit and loss account, such as, for example, share premiums. A revenue reserve is, in effect, any amount which is legally available for distribution as dividend. The latter, therefore, differs from both a capital reserve and a provision in that it is a free or open reserve. The language of the Schedule defines a revenue reserve rather in a negative way, that is, by stating what it is not, while on the other hand, the Schedule is positive with regard to a capital reserve.

Definitions.—"Director", "recognised stock exchange" (section 455 (1)).

NINTH SCHEDULE

Section 162.

MATTERS TO BE EXPRESSLY STATED IN AUDITORS' REPORT

1. Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit.

2. Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

3.—(1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

(2) Whether, in their opinion and to the best of their information and according to the explanations given them, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

(a) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(b) in the case of the profit and loss account, of the profit or loss for its financial year;

or, as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Eighth Schedule to this Act are not required to be disclosed.

4. In the case of a holding company submitting group accounts whether, in their opinion, the group accounts have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company, or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Eighth Schedule to this Act are not required to be disclosed.

NOTES

The Schedule relates to section 162 and incorporates the provisions of the Second Schedule of the 1947 Act as applied to section 22 of that Act. The latter provisions came into force on July 1, 1948.

The effect of the Schedule is to set out the statements to be contained in the auditors' report in lieu of those under section 134 of the 1929 Act.

For a suggested form of report to comply with these requirements, see Appendix II, Forms Nos. 5 and 6.

Auditors' right of access to books.—The auditors' right of access to the books, accounts and vouchers of the company is not qualified by the Act (see section 162 (3)). That position was also covered by the 1929 Act. The auditor is now entitled, however, to require from the directors such information and explanations as may be necessary for the purposes of the audit. Such rights should obviously be exercised if the auditor thinks that the directors are withholding certain financial information from him which perhaps they might not wish him to find out. This right of access is not necessarily limited to the books of account, and would, for example, apply to the inspection of documents relating to patent rights to determine whether or not in fact that patent was being used by the company. The value of the patent concerned might be included among the assets in the balance sheet, and if, for example, it had been discontinued some time ago, it would be the auditors' duty to mention it in his report. This is not to say that he is qualified to state whether or not the patent was good or bad, but simply to state that it was not being used and consequently that it did not have the value assigned to it. If the auditor was refused the inspection of the document which he thought it was necessary for him to see, he would have to qualify his report accordingly, and the explanation would then have to come from the directors.

On the question of the books of the company, it is not of course for the directors to decide which books are necessary for the auditor to see, it being for the auditor to judge what is necessary for the purpose of his audit (see section 162 (3)). The effect of this provision is that it is left to the auditor to decide what he will accept as sufficient for that purpose.

Auditors' report in the case of consolidated accounts where there are different auditors from the holding company's auditors.—I.e. where the subsidiary company has different auditors from the holding company's auditors. It is not unusual for a different auditor to audit the affairs of a subsidiary, and there is nothing in the Act to suggest that this is not permissible. It would seem (by implication (see paragraph 15 (4) (d), *supra*)), that the auditors of the holding company would be entitled to rely on the certificate of another firm acting as auditors to one of the subsidiary companies. It should be noted, however, that the holding company's auditors are *prima facie* responsible for the group accounts audited by them, and what the legal position of such auditors is in relation to audit work carried out by other auditors on subsidiary work is not quite clear with regard to errors committed by the latter. A similar question may arise in connection with the company's own system of internal check and to how far the auditor may rely thereon. The Act, however, does nothing to relieve the auditor of his responsibility while on audit and the general principle applies, namely, that the matter is left to him to decide how he does a particular audit. That is his work and responsibility, and in the case of an internal audit, it would, of course, be part of his duties to check what the company staff were doing. It is, therefore, for him alone to decide whether to accept the audit work of the internal staff in relief of his own duties.

Books of Account.—See also sections 147, 331, 340, 436.

Company's balance sheet and profit and loss account.—See section 149, and the Eighth Schedule, Part I.

Consolidated profit and loss account.—See section 151, and the Eighth Schedule, Parts I and II.

True and fair view.—See section 149.

Group accounts.—See sections 150-152.

Definitions.—"Holding company", "subsidiary company" (section 154); "accounts" "book and/or paper", "company", "financial year", "group accounts" (section 455 (1)).

Section 277.

TENTH SCHEDULE

ORDERS IN COURSE OF WINDING UP PRONOUNCED IN VACATION IN SCOTLAND

PART I

ORDERS WHICH ARE TO BE FINAL

Orders under section two hundred and sixty-four as to the time for proving debts and claims.

Orders under section two hundred and sixty-eight as to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

Orders under section three hundred and forty-six as to meetings for ascertaining wishes of creditors or contributors.

Orders under section three hundred and forty-nine as to the examination of witnesses in regard to the property or affairs of a company.

PART II

ORDERS WHICH ARE TO TAKE EFFECT UNTIL MATTER
DISPOSED OF BY INNER HOUSE

Orders under section two hundred and twenty-six, two hundred and thirty-one, two hundred and fifty-six, three hundred and ninety-seven, four hundred and two or four hundred and three restraining or permitting the commencement or the continuance of legal proceedings.

Orders under subsection (4) of section two hundred and thirty-eight limiting the powers of provisional liquidators.

Orders under section two hundred and forty-two, three hundred and four or three hundred and fourteen appointing a liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or subject to supervision.

Orders under section two hundred and forty-five sanctioning the exercise of any power by a liquidator other than the powers specified in paragraphs (c), (d), (e) and (f) of subsection (1).

Orders under section two hundred and fifty-eight requiring the delivery of property or documents to the liquidator.

Orders under section two hundred and seventy-one as to the arrest and detention of an absconding contributory and his property.

Orders under section three hundred and eleven for continuance of winding up subject to supervision.

NOTE

This Schedule, which relates to section 277, reproduces the substance of the Eighth Schedule to the 1929 Act.

ELEVENTH SCHEDULE

Section 315.

PROVISIONS OF THIS ACT WHICH DO NOT APPLY IN THE CASE OF A WINDING
UP SUBJECT TO SUPERVISION OF THE COURT

<i>Section</i>	<i>Subject Matter</i>
235.	Statement of company's affairs to be submitted to official receiver.
236.	Report by official receiver.
237.	Power of court to appoint liquidators.
238.	Appointment and powers of provisional liquidator.
239.	Appointment, style, etc., of liquidators in England.
240.	Provisions where person other than official receiver is appointed liquidator.
241.	Provisions as to liquidators in Scotland.
242 (except subs. (5)).	General provisions as to liquidators.
246.	Exercise and control of liquidator's powers in England.
247.	Books to be kept by liquidator in England.
248.	Payments of liquidator in England into bank.
249.	Audit of liquidator's accounts in England.
250.	Control of Board of Trade over liquidators in England.
251.	Release of liquidators in England.
252.	Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.
253.	Constitution and proceedings of committee of inspection.
254.	Powers of Board of Trade in England where no committee of inspection.
255.	Additional powers of committee of inspection in Scotland.
263.	Appointment in England of special manager.
270.	Power in England to order public examination of promoters and officers.
273.	Delegation to liquidator of certain powers of court in England.
368.	Power in England to appoint official receiver as receiver for debenture holders or creditors.

NOTE

This Schedule, which relates to section 315, *ante*, corresponds with the Ninth Schedule to the 1929 Act, which it reproduces in substance.

TWELFTH SCHEDULE

Sections 425, 454.

FEES TO BE PAID TO THE REGISTRAR OF COMPANIES

PART I

TABLE OF FEES

<i>Matter in respect of which Fee is payable</i>	<i>Amount of Fee</i>
For registration of a company limited by shares.	<p>If the nominal capital does not exceed £2,000, the sum of £2.</p> <p>If the nominal capital exceeds £2,000 but does not exceed £5,000, the sum of £2 with the addition of £1 for each £1,000 or part of £1,000 of nominal capital in excess of £2,000.</p> <p>If the nominal capital exceeds £5,000 but does not exceed £100,000, the sum of £5 with the addition of 5s. for each £1,000 or part of £1,000 of nominal capital in excess of £5,000.</p> <p>If the nominal capital exceeds £100,000, the sum of £28 15s. 0d. with the addition of 1s. for each £1,000 or part of £1,000 of nominal capital in excess of £100,000.</p>

<i>Matter in respect of which Fee is payable</i>	<i>Amount of Fee</i>
For registration of a company not having a share capital.	<p>If the number of members stated in the article does not exceed 25, the sum of £2.</p> <p>If the number of members stated in the articles exceeds 25, but does not exceed 100, the sum of £2 with the addition of £1 for each 25 members or fraction of 25 members in excess of the first 25.</p> <p>If the number of members stated in the articles exceeds 100 but is not stated to be unlimited, the sum of £5 with the addition of 5s. for each 50 members or fraction of 50 members after the first 100.</p> <p>If the number of members is stated in the articles to be unlimited, the sum of £20.</p>
For registration of a company limited by guarantee and having a share capital or an unlimited company having a share capital.	The same amount as would be charged for registration if the company were limited by shares or the same amount as would be so charged if the company had not a share capital, whichever is the higher.
For registration of an increase in the share capital of any company.	An amount equal to the difference (if any) between the amount which would have been payable on first registration by reference to its capital as increased and the amount which would have been so payable by reference to its capital immediately before the increase.
For registration of an increase in the membership of a company limited by guarantee or an unlimited company.	An amount equal to the difference (if any) between the amount which would have been payable on first registration by reference to its membership as increased and the amount which would have been so payable by reference to its membership immediately before the increase.
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act.	The same amount as is charged for registering a new company.
For registering any document by this Act required or authorised to be registered or required to be delivered, sent or forwarded to the registrar other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager, the statement required to be sent to the registrar by the liquidator in a winding up in England or a document required to be delivered under section four hundred and sixteen of this Act.	Five shillings.
For making a record of any fact by this Act required or authorised to be recorded by the registrar.	Five shillings.

PART II

LIMITATIONS ON OPERATION OF PART I

1. Where in the case of a company limited by guarantee and having a share capital or an unlimited company having a share capital, an increase of share capital is made at the same time as an increase of membership, the company shall pay whichever fee is the higher, but not both.

2. The total of the fees payable by any company by reference to its membership shall in no case exceed twenty pounds.

3. The total of the fees payable by any company by reference to its share capital or of the fees payable by it by reference to its membership and the fees payable by it by reference to its share capital, shall in no case exceed fifty pounds.

NOTES

The Schedule reproduces Schedule X of the 1929 Act, as amended by section 81 of the 1947 Act, and as applied to the provisions of the latter Act by *ibid.*, section 122 (7) and the Eighth Schedule. The last-mentioned provisions, so far as they affect this Schedule, came into force on July 1, 1948. See section 425.

Effect of change.—Section 81 of the 1947 Act amended the provisions of the Tenth Schedule of the 1929 Act (with which the present Schedule corresponds) by making special provision in the case of companies limited by guarantee or unlimited companies where either type of company has a share capital, with the purpose of preventing evasion of payment of high fees appropriate to a high membership by the device of having a small share capital. It is accordingly provided that if the fees which would have been paid on the basis of membership would be higher than those paid on the basis of the amount of the company's share capital the higher fee is payable on registration. For that purpose, it was also provided that the articles of such a company must state the number of members with which it is proposed to be registered, notwithstanding that it has a share capital (see section 7). It is further provided that the appropriate fee is payable on registration of an increase of membership as well as on registration of an increase of share capital, but where an increase is registered under both heads, the fee payable is the higher of the two, but not both (see Part II, *supra*). For example, if the company was registered with 50 members and £2,000 capital, the fee on the original registration will be £3 (the amount payable in respect of 50 members, which is higher than the £2 payable in respect of £2,000 capital). If the members are increased to 75, the additional 25 members must be registered, and a further fee of £1 is payable. If, on a separate occasion, the capital is increased to £3,500, a further fee of £2 is payable in respect of the additional £1,500 capital. If, however, both increases are registered simultaneously, the £2 payable in respect of the capital only, being the higher, is the appropriate fee, the further fee of £1 in respect of the members not being payable.

In the case of any increase, whether of membership or share capital, the fee payable on registration of such increase is calculated as though the increased membership or capital, as the case may be, had formed part of the original capital or membership at the time of registration, allowance being made for the fee already paid. For example, if £2,000 capital had already been registered, and a fee of £2 paid in respect thereof, if an additional £1,000 is registered, the fee is £1, not £2, as on an original registration. If, thereafter, an additional £3,000 is registered, £2 will be payable in respect of the first £2,000 thereof, making, with the amount already registered, £5,000, and 5s. in respect of the remaining £1,000, this now being the excess over £5,000. Similarly, if 50 members were originally registered and a fee of £3 paid, if another 100 members are registered, £2 will be payable in respect of the first 50, making £5 in respect of the first 100 members, and another 5s. in respect of the remaining 50. If both an increase of membership and of capital is registered at the same time, the higher fee only is payable, but not both.

In no case will the fee in respect of membership, however, exceed £20, or, in respect of capital, £50. Where the fee is calculated by reference to both membership and capital, the maximum is £50 (see Part II, *supra*).

General note.—The Board of Trade has power, by statutory instrument, to alter this Schedule (see section 454 (2)). In the case of companies registered with limited liability, *ad valorem* stamp duty is also payable (see Stamp Act, 1891, section 112; Finance Act, 1933, section 41 (1)). The duty on an increase must be paid, although the new shares are merely substituted for cancelled or other shares (*Midland Rail. Co. v. A.-G.*, [1902] A.C. 171; 10 Digest 1114, 7840).

Definitions.—"Company limited by shares", "company limited by guarantee", "unlimited company" (section 1); "member" (section 26); "company", "document", "existing company", "registrar of companies", "share" (section 455 (1)).

THIRTEENTH SCHEDULE

Sections 433, 454.

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES
AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES

* The share capital of the company is _____, divided into
shares of _____ each.
The number of shares issued is _____
Calls to the amount of _____ pounds per share have been made, under which
the sum of _____ pounds has been received.
The liabilities of the company on the first day of January (or July) were—
Debts owing to sundry persons by the company,
On judgment, £ _____
On specialty, £ _____
On notes or bills, £ _____
On simple contracts, £ _____
On estimated liabilities, £ _____

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

The assets of the company on that day were—
 Government securities [*stating them*]
 Bills of exchange and promissory notes, £
 Cash at the bankers, £
 Other securities, £

NOTE

This Schedule, which relates to section 433, reproduces the Seventh Schedule to the 1929 Act. As to the power of the Board of Trade to alter the provisions of this Schedule, see section 454 (2).

Section 435.

FOURTEENTH SCHEDULE

PROVISIONS OF THIS ACT APPLIED TO UNREGISTERED COMPANIES

<i>Subject matter</i>	<i>Provisions applied</i>	<i>Limitations on Application</i>
Prospectuses and allotments.	Sections thirty-seven to forty-six, fifty, fifty-one and fifty-five, and the Fourth Schedule.	To apply so far only as may be specified by regulations made by the Board of Trade and to such bodies corporate as may be so specified.
Annual return ..	Sections one hundred and twenty-four to one hundred and twenty-nine and four hundred and thirty-two, and the Sixth and Seventh Schedules.	Not to apply so as to require particulars in respect of any period before the commencement of this Act, and as respects any period thereafter to apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Accounts and audit	Sections one hundred and forty-seven to one hundred and sixty-three, one hundred and ninety-six, one hundred and ninety-seven and four hundred and thirty-three, the Eighth Schedule (except sub-paragraphs (a) to (d) of paragraph 2, sub-paragraphs (c), (d) and (e) of paragraph 3 and sub-paragraph (1) (c) of paragraph 8) and the Ninth Schedule.	To apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Investigations ..	Sections one hundred and sixty-four to one hundred and seventy-five.	—
Register of directors and secretaries.	Section two hundred.	—
Registration of documents, enforcement and other supplemental matters.	Sections one hundred and ninety-eight, four hundred and twenty-five to four hundred and twenty-eight, four hundred and thirty-six to four hundred and thirty-eight, four hundred and forty to four hundred and forty-six and four hundred and fifty, subsection (1) of section four hundred and fifty-four, section four hundred and fifty-five and the Twelfth and Fifteenth Schedules.	To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this Schedule.

NOTE

This Schedule, which relates to section 435, reproduces the Sixth Schedule to the 1947 Act which came into force on July 1, 1948.

FIFTEENTH SCHEDULE

Section 438.

PROVISIONS REFERRED TO IN SECTION 438 OF THIS ACT

<i>Section or provision of Schedule</i>	<i>Subject matter</i>
15	Conclusiveness of certificate of incorporation.
30	Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.
38	Matters to be stated and reports to be set out in prospectus.
43	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.
52	Return as to allotments.
95	Registration of charges created by companies registered in England.
96 (1) ..	Duty of company to register charges created by company.
97	Duty of company to register charges existing on property acquired.
106	Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England.
109	Restrictions on commencement of business.
125 (except para. (a) of subs.(1)).	Particulars in annual return of company not having a share capital.
128	Certificates to be sent by private company with annual return.
129 (1) ..	Certificate of satisfaction of conditions constituting a company an exempt private company.
130	Statutory meeting and statutory report.
162 (1), (3) ..	Auditors' report and right to information and explanations.
181	Restrictions on appointment or advertisement of director.
305	Notice by liquidator of his appointment.
372 (2) ..	Abstract of receiver's receipts and payments.
374	Delivery to registrar of accounts of receivers and managers.
407	Documents, etc., to be delivered to registrar by overseas companies carrying on business in Great Britain.
409	Return to be delivered to registrar by overseas company where documents, etc., altered.
410	Accounts of overseas company.
411	Obligation to state name of overseas company, whether limited, and country where incorporated.
451	Annual report by Board of Trade.
Sch. VI, Part I, paras. 2, 4, 6.	Particulars in annual return of company having a share capital.

NOTE

This Schedule relates to section 438, and reproduces the Eleventh Schedule to the 1929 Act, as amended by sections 22 (1), 55 (2), 67 (7), 84 (7) and 112 (3) of the 1947 Act, which came into force on July 1, 1948. As to these last-mentioned provisions, see sections 156 (1), 372 (7) and 438, *ante*.

SIXTEENTH SCHEDULE

Section 456

AMENDMENTS OF OTHER ACTS

The Assurance Companies Acts, 1909 to 1946

1. The Assurance Companies Acts, 1909 to 1946, shall have effect as if—
 - (a) for subsection (4) of section two of the Assurance Companies (Winding Up) Act, 1933, as substituted by the Assurance Companies (Winding Up) Act, 1935, there were substituted the following subsection :—

“(4) Where an appointment is made under this section the provisions of sections one hundred and sixty-six and one hundred and sixty-seven of the Companies Act, 1948, shall apply with respect to an inspector appointed under this section in like manner as they apply to an inspector appointed under section one hundred and sixty-four of that Act, and any such refusal as under subsection (3) of the said section one hundred and sixty-seven is, or might be, made the ground of the punishment of an officer or agent of the company or other body corporate whose affairs are investigated by virtue of the said section one hundred and sixty-six, shall also be a ground on which the company may, on the

petition of the Board of Trade presented by leave of the court, be wound up by the court in accordance with the provisions of the Companies Act, 1948"; and

- (b) the powers conferred on the Board of Trade and the Industrial Assurance Commissioner respectively by virtue of subsection (3) of section seven of the Assurance Companies Act, 1946, to make regulations providing for the modification, in consequence of the passing of that Act, of the forms set out in the Schedule to the Assurance Companies Act, 1909, extended to the modification, having regard to the provisions of the Eighth Schedule to this Act, of any form set out in the Schedules to either of those Acts.

The Prevention of Fraud (Investments) Act, 1939

2.—(1) Subsection (2) of section two of the Prevention of Fraud (Investments) Act, 1939, shall have effect as if for paragraphs (b), (c) and (d) thereof there were substituted the following paragraphs:—

"(b) issuing any prospectus to which—

(i) section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section thirty-nine of that Act; or

(ii) section four hundred and seventeen of that Act applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section four hundred and eighteen of that Act;

- (c) issuing any document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section thirty-nine of that Act; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections four hundred and seventeen and four hundred and nineteen of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company; and

- (d) issuing any form of application for shares in, or debentures of, a corporation together with—

(i) a prospectus which complies with the requirements of section thirty-eight of the Companies Act, 1948, or is not required to comply therewith because excluded by paragraph (b) of subsection (5) of that section or by section thirty-nine of that Act, or complies with the requirements of Part X of that Act relating to prospectuses and is not issued in contravention of section four hundred and nineteen of that Act; or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (c) of this subsection".

(2) Subsection (2) of section thirteen of the said Act shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs:—

"(a) in relation to any distribution of a prospectus to which section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section thirty-nine of that Act or section four hundred and seventeen of that Act applies or would apply if not excluded by paragraph (b) of subsection (5) of that section or by section four hundred and eighteen of that Act, or in relation to any distribution of a document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which the said section thirty-eight applies or would apply if not excluded as aforesaid; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections four hundred and seventeen and four hundred and nineteen of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company;

- (b) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with—

(i) a prospectus which complies with the requirements of section thirty-eight of the Companies Act, 1948, or is not required to comply therewith because excluded by paragraph (b) of subsection (5) of that section or by section thirty-nine of that Act, or complies with the requirements of Part X of that Act relating to prospectuses and is not issued in contravention of section four hundred and nineteen of that Act, or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (a) of this subsection,

or in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or".

3. Sub-paragraph (iii) of paragraph (a) of subsection (3) of the said section thirteen shall have effect as if for the words "a subsidiary company as defined by section one hundred and twenty-seven of the Companies Act, 1929", there were substituted the words "a subsidiary company as defined by section one hundred and fifty-four of the Companies Act, 1948".

The Companies Act, 1947

4. At the end of section fifty-eight of the Companies Act, 1947, there shall be added the following subsection :—

"(4) In this section the expression "director" includes any person occupying the position of director by whatever name called."

5.—(1) Subsections (1), (4) and (5) of section one hundred and fifteen of the Companies Act, 1947, shall have effect subject to the amendments respectively set out in sub-paragraphs (2), (3) and (4) of this paragraph.

(2) In subsection (1), for the words "subsections (1) to (6) of the section of this Act relating to preferential payments in a winding up" there shall be substituted the words "section ninety-one of this Act."

(3) In subsection (4), for the words "The provisions of this Act relating to a fraudulent preference of a surety or guarantor", there shall be substituted the words "Section ninety-two of this Act".

(4) In subsection (5), for the words "The provisions of this Act relating to the liability in respect of a rentcharge on land disclaimed under section two hundred and sixty-seven of the principal Act", there shall be substituted the words "Section ninety-nine of this Act".

6. In subsection (3) of section one hundred and seventeen of the Companies Act, 1947, for the words from "and subsections (3) to (6)" to the end of the subsection there shall be substituted the words "and section one hundred and sixty-seven of the Companies Act, 1948, subsection (1) of section one hundred and sixty-eight thereof and so much of subsection (2) of that section as relates to forwarding a copy of the inspector's report to the registered office of the company shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section one hundred and sixty-four of that Act, but with the substitution for references to the company or other body corporate and its affairs of references to the manager under the scheme and to the administration of the scheme".

NOTES

See section 456.

The Schedule, as to paragraphs 1 to 3, corresponds with section 118 of the 1947 Act, which, as to subsection (3) (a), came into force on December 1, 1947, and as to the remainder, on July 1, 1948. Paragraphs 4 to 6 are consequential on the sections of the 1947 Act there mentioned remaining in force after July 1, 1948, after the remainder of that Act was repealed (see section 459, *ante*, and the Seventeenth Schedule, *post*).

General note.—The amendments to the Assurance Companies Acts, 1909 to 1946, and the Prevention of Frauds (Investments) Act, 1939, which applied certain provisions of the 1929 Act, are consequential on the changes introduced by the present Act and are designed to bring those Acts into conformity with the present Act.

Sections 58, 115 and 117 of the 1947 Act remain in operation, and the provisions of paragraphs 4 to 6, *supra*, are in the nature of tidying up amendments, so that these provisions of the 1947 Act may be as self-contained as possible.

SEVENTEENTH SCHEDULE

Section 459.

ENACTMENTS REPEALED

PART I

GENERAL REPEALS

Session and Chapter	Short Title	Extent of Repeal
19 & 20 Geo. 5 c. 23.	The Companies Act, 1929.	The whole Act.
24 & 25 Geo. 5 c. 23.	The Workmen's Compensation (Coal Mines) Act, 1934.	In section three, in subsection (6), the words from "and (b)" to the end of paragraph (c), and the words "or the company, as the case may be".

Session and Chapter	Short Title	Extent of Repeal
25 & 26 Geo. 5 c. 8.	The Unemployment Insurance Act, 1935.	In section twenty, subsection (1).
26 Geo. 5 & 1 Edw. 8 c. 32.	The National Health Insurance Act, 1936.	In section one hundred and seventy-seven, subsection (1).
1 Edw. 8 & 1 Geo. 6 c. 54	The Finance Act, 1937.	In Part III of the Fifth Schedule, in paragraph 5, the words from "in the winding up" to "that charge" and the words "and companies". Section five.
2 & 3 Geo. 6 c. 57.	The War Risks Insurance Act, 1939.	
5 & 6 Geo. 6 c. 21.	The Finance Act, 1942.	In section twenty, subsections (2) and (3), and in subsection (4) the words "and the last foregoing subsection shall not apply to a company registered in Scotland".
7 & 8 Geo. 6 c. 15.	The Reinstatement in Civil Employment Act, 1944.	In section eighteen, subsections (2) and (3), and subsection (4) so far as it relates to those subsections.
9 & 10 Geo. 6 c. 62.	The National Insurance (Industrial Injuries) Act, 1946.	In section seventy-one, subsection (1), and in the Ninth Schedule the entry relating to the Companies Act, 1929.
9 & 10 Geo. 6 c. 67.	The National Insurance Act, 1946.	In section fifty-five, subsection (1).
10 & 11 Geo. 6 c. 47.	The Companies Act, 1947.	Sections one to fifty-seven and fifty-nine to ninety. In section ninety-one, subsection (3), in subsection (4) the words "and two hundred and ninety-eight", in subsection (5) the words from "and in relation to" to the end of the subsection, and subsections (7) and (8). In section ninety-two, subsection (1). Sections ninety-three to ninety-eight and one hundred to one hundred and fourteen. In section one hundred and fifteen, in subsection (1), the words "other than a company within the stannaries" and the words from "and also" to the end of the subsection. Sections one hundred and eighteen to one hundred and twenty-one. In section one hundred and twenty-two, in subsection (1), the words from "and, except" to the end of the subsection, and subsections (2) to (7). In section one hundred and twenty-three, in subsection (1), the words from "and this Act" to the end of the subsection, and subsection (3) so far as it relates to Part I of the Ninth Schedule. The First to Eighth Schedules, and Part I of the Ninth Schedule.

PART II

PROVISIONS OF THE COMPANIES ACT, 1947, REPEALED EXCEPT FOR PURPOSES OF
SECTION ONE HUNDRED AND FIFTEEN THEREOF

<i>Provision</i>	<i>Extent of Repeal</i>
Section ninety-one	The whole section except so far as it has effect for the purposes of subsection (1) of section one hundred and fifteen of the Companies Act, 1947.
Section ninety-two	The whole section except as applied by subsection (4) of the said section one hundred and fifteen.
Section ninety-nine	The whole section except as applied by subsection (5) of the said section one hundred and fifteen.

EIGHTEENTH SCHEDULE

Section 459.

ENACTMENTS SAVED

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND
(7 & 8 Vict. c. 113, s. 47)

Existing companies to have the powers of suing and being sued.—Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled “An Act to regulate Joint Stock Banks in England,” shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

THE JOINT STOCK BANKING COMPANIES ACT, 1857,
PART OF S. 12

Power to form banking partnerships of ten persons.—Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled “An Act to regulate Joint Stock Banks in England,” or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

COMPANIES ACT, 1947

10 & 11 Geo. 6 Ch. 47

An Act to amend the law relating to companies and unit trusts and to dealing in securities, and in connection therewith to amend the law of bankruptcy and the law relating to the registration of business names. [6th August, 1947]

* * * *

58. Extension of Registration of Business Names Act, 1916, to companies.—(1) In section one of the Registration of Business Names Act, 1916 (which requires registration under that Act of all individuals and firms carrying on business under a business name), there shall be inserted after paragraph (c) thereof the following paragraph :—

“(d) every company as defined in the Companies Act, 1929, carrying on business under a business name which does not consist of its corporate name without any addition ;”.

(2) Subsection (1) of section three (which relates to the particulars to be registered), and the proviso to section five (which relates to the time for registration), of the first-mentioned Act shall apply in relation to registration by virtue of this section as if references therein to the passing of that Act were references to the coming into force of this section.

(3) Section thirteen of that Act (which relates to the removal of names from the register where a firm or individual ceases to carry on business) shall apply in relation to a company registered under that Act by virtue of this section, which ceases to carry on business in such circumstances as to require registration thereunder, as it applies in relation to a firm which ceases to carry on business, but with the substitution for the reference to the partners in the firm of a reference to the directors and any liquidator of the company.

[(4) In this section the expression “director” includes any person occupying the position of director by whatever name called.]

NOTES

Subsections (1) to (3) inclusive of this section were brought into force on December 1, 1947, by the Companies Act (Commencement) Order, 1947, S.R. & O. 1947 No. 2503. Subsection (4) was added by the Companies Act, 1948, s. 456 and Sixteenth Schedule, para. 4. The provisions of the Registration of Business Names Act, 1916, 19 Halsbury's Statutes 880, as amended by the 1947 Act, and the Business Names Rules and Forms are set out in Appendix III, *post*.

General effect of section.—The section puts a company in the same position as an individual or a firm in regard to the Registration of Business Names Act, 1916, 19 Halsbury's Statutes 880. In the same way as an individual who carries on a business in a name other than his own or a firm in a name other than that of its partners is required to be registered under section 1 of that Act, so a company which carries on business in a name which does not consist of its corporate name without any addition must also be so registered (subsection (1)), as from the coming into force of the section (subsection (2)). A company ceasing to carry on business in a name necessitating such registration (e.g., where it reverts to the use of its corporate name) or ceasing to carry on business at all (e.g., where it is wound up) will be removed from the register under *ibid.*, section 13, which will apply with the necessary modifications (subsection (3)).

* * * *

91. Amendments as to preferential payments.—(1) The maximum amount to which, under subsection (1) of section two hundred and sixty-four of the principal Act, priority is to be given—

- (a) to a debt for the wages or salary of a clerk or servant, or
- (b) to a debt for the wages of a workman or labourer, or
- (c) to any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation ;

shall be two hundred pounds (instead of being fifty pounds in the cases referred to in paragraphs (a) and (c) of this subsection or twenty-five pounds in the case referred to in paragraph (b) thereof).

(2) The period within which services must have been rendered by a workman or labourer for his wages in respect thereof to have priority under the said subsection (1) shall be the same as in the case of a clerk or servant, that is to say, four months (instead of two months).

(3) (*Repealed.*)

(4) For the purposes of the said section two hundred and sixty-four . . . any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

(5) The debts which are to be paid in priority under the said section two hundred and sixty-four shall include all accrued holiday remuneration becoming payable to a clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment with the company before or by the effect of the winding up order or resolution; . . .

(6) For the purposes of this section—

(a) the expression “accrued holiday remuneration” includes in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would in the ordinary course have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday; and

(b) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period.

(7) (8) (*Repealed.*)

NOTES

The section is here reproduced as amended by the 1948 Act, Seventeenth Schedule Part I, and remains in force as so amended for the purposes of section 115 of the 1947 Act only (see Seventeenth Schedule, Part II). The section as so amended came into force on July 1, 1948.

For the purposes of the remainder of the 1947 Act, the section is incorporated in section 319 of the 1948 Act, which see, with notes thereto, *ante*, at pp. 263 *et seq.*

92. Amendments as to fraudulent preference.—(1) (*Repealed.*)

(2) Where, in the case of a company wound up in England, anything made or done after the coming into force of this section is void under the said section two hundred and sixty-five as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(3) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(4) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid. This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

NOTES

The section is here reproduced as amended by the Companies Act, 1948, s. 459 and Seventeenth Schedule, Part I, and remains in force as so amended for the purposes of section 115 of the 1947 Act only (see Seventeenth Schedule, Part II). The section, as so amended came into force on July 1, 1948.

For the purposes of the remainder of the 1947 Act, the section is reproduced in section 321 of the 1948 Act, which see, with notes thereto, at pp. 268, 269, *ante*.

* * * * *

99. Liability for rentcharge on company's land after dissolution or disclaimer.—(1) Where by operation of law land in England vests subject to a rentcharge in the Crown or any other person either—

- (a) on the dissolution of a company ; or
- (b) on a disclaimer under section two hundred and sixty-seven of the principal Act ;

that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.

(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.

(3) This section shall apply to land vesting and sums accruing due before, as well as after, the coming into force thereof.

(4) In this section the expression " company " includes any body corporate.

NOTES

The section, which came into force on July 1, 1948, remains in force for the purpose of section 115 of the 1947 Act only (see 1948 Act, Seventeenth Schedule, Part II). For the purposes of the remainder of that Act, it has now been incorporated in sections 324 and 356 of the 1948 Act. See the note to the former section, pp. 272, 273, *ante*.

* * * * *

115. Bankruptcy.—(1) Subsection (1) of section thirty-three of the Bankruptcy Act, 1914, and subsection (1) of section one hundred and eighteen of the Bankruptcy (Scotland) Act, 1913, shall have effect subject to the like amendments as are by [section ninety-one of this Act] made in relation to the winding up of a company . . . but with the substitution for references to the company and to the winding up order or resolution of references to the bankrupt and to the receiving order or, in the case of a person dying insolvent, to the deceased and to his death. . . .

(2) The rights conferred by sections forty and forty-one of the Bankruptcy Act, 1914, on the official receiver or trustee in bankruptcy in relation to executions against the goods or other property of the debtor and attachments of debts due to the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(3) In subsection (1) of section forty-four of the Bankruptcy Act, 1914 (which relates to fraudulent preferences), for the reference to three months there shall be substituted a reference to six months, and in the Act of the Parliament of Scotland, 1696, c. 5 (which relates to similar matters), for any reference to sixty days there shall be substituted a reference to six months.

(4) [Section ninety-two of this Act] shall apply also in relation to the Bankruptcy Act, 1914 (with the necessary modification of any reference to a company), as if a reference to the said section forty-four of that Act were substituted in those provisions for the reference to section two hundred and sixty-five of the principal Act.

(5) [Section ninety-nine of this Act] shall apply also in relation to land disclaimed under section fifty-four of the Bankruptcy Act, 1914.

(6) Subsection (1) of this section shall not apply where the date of the receiving order (or, in relation to the estate of a person dying insolvent, the date of his death) occurred before the coming into force of this section and subsection (3) of this section shall not apply in relation to anything made or done before the coming into force thereof.

(7) In the application of this section to Scotland, references to the receiving order shall be construed as references to the award of sequestration.

NOTES

General effect of section.—The section embodies certain amendments to the bankruptcy law consequent on the amendments made in Part V, *ante*, in regard to the winding-up of companies. The words in square brackets in subsections (1), (4) and (5) were substituted by the Companies Act, 1948, Sixteenth Schedule, paragraph 5.

Subsection (1) applies the provisions of section 91 (1)–(6) of the 1947 Act to preferential payments in bankruptcy; subsection (2) limits the rights of the official receiver or trustee in bankruptcy in regard to executions in the same way as the rights of a liquidator on a winding-up are limited by sections 325, 326 of the 1948 Act; the position as regards fraudulent preference is brought into line with the provisions of section 92 of the 1947 Act which affect that position in the case of a winding-up (subsections (3), (4)), and a similar relief from liability in respect of rentcharges is given the Crown and other persons to whom land disclaimed under the Bankruptcy Acts would pass, as is given them on disclaimer in winding-up by section 324 of the 1948 Act (subsection (5)).

The extended provisions as to preferential payments apply only to a bankruptcy occurring after the section came into force, and the fraudulent preferences referred to are those made after that date (subsection (6)).

Section 33(1) of the Bankruptcy Act, 1914, and section 118 (1) of the Bankruptcy (Scotland) Act, 1913.—These provisions deal with preferential payments in bankruptcy and are similar to those made in winding-up by section 319 of the 1948 Act, as to which, see note p. 264, *ante*. They are now amended to conform with that section.

Rights conferred by sections 40 and 41 of the Bankruptcy Act, 1914. . . . as the Court may think fit.—Sections 40 and 41 of the Bankruptcy Act, 1914, correspond with sections 325 and 326 of the 1948 Act, and these sections of the Bankruptcy Act are amended by the present section to conform with those of the 1948 Act.

Section 44 (1) of the Bankruptcy Act, 1914 . . . Act of Parliament of Scotland, 1696, c. 5 . . . six months.—Cf. the corresponding provision as to winding-up made by section 320 of the 1948 Act, and see notes thereto.

Provision . . . relating to a fraudulent preference of a surety or guarantor . . . as if a reference to the said section 44 . . . were substituted for the reference to section 265 of the principal Act.—See section 92 (2) of the 1947 Act and notes thereto. See also *ibid.*, subsections (3) and (4), *ante*.

The coming into force of this section.—The section came into force on July 1, 1948, and is continued in force.

116. Registration of business names.—(1) The power conferred by section fourteen of the Registration of Business Names Act, 1916, on the registrar under that Act to refuse registration of a business name shall (without prejudice to the specific provisions of that section) extend to any name which is in his opinion undesirable.

(2) Where registration of a business name is refused under the said section fourteen, any person carrying on business under that name in such circumstances as to require registration under that Act shall be liable under section seven thereof to the same penalties as if he had without reasonable excuse made default in furnishing a statement of particulars with respect to that name.

(3) So much of any provision of the Registration of Business Names Act, 1916, as requires a person's nationality of origin to be stated shall cease to have effect.

(4) So much of section twenty-two of the Registration of Business Names Act, 1916, as provides that references in that Act to a former christian name or surname or to a change of name shall have any special meaning in the case of natural born British subjects shall cease to have effect, and—

(a) references in that Act to a former christian name or surname shall not, in the case of any person, include a former christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years or has been changed or disused for a period of not less than twenty years ; and

(b) an individual or firm shall not require to be registered under that Act by reason only of a change of his name, or of the name of a member of the firm, if the change has taken place before the person who has changed his name has attained the age of eighteen years or if not less than twenty years have elapsed since it took place.

(5) Where by virtue of the last foregoing subsection an individual or firm registered under the Registration of Business Names Act, 1916, no longer requires to be so registered—

(a) the registrar, if so requested by the individual or firm, shall remove him or it from the register ; and

(b) section eleven of that Act shall no longer require the individual or firm to keep exhibited the certificate of registration or a copy thereof ;

and where, in any other case, the particulars registered under that Act in respect of any individual or firm include a former name or surname which by virtue of the last foregoing subsection no longer requires to be included among those particulars, the registrar, if so requested by the individual or firm, shall amend the particulars by leaving out that name or surname.

NOTES

General effect of section.—This section makes certain amendments to the provisions of the Registration of Business Names Act, 1916, 19 Halsbury's Statutes 880, most of which correspond with the changes introduced by this Act in connection with the registration of companies and matters incidental thereto. The provisions of that Act and of the Business Names Rules and Forms are set out in Appendix III, *post*.

Subsection (1) confers upon the Registrar under the Registration of Business Names Act similar powers to those conferred upon the Board of Trade by section 17 of the 1948 Act, *ante*, to refuse to register a name which is considered undesirable. Subsection (2) imports the penalties imposed by section 14 of the Registration of Business Names Act for default thereunder into this section for carrying on business in a name registration of which has been refused by the Registrar. Subsection (3) follows section 200 (2) of the 1948 Act, in dispensing with the requirements of the 1916 Act requiring particulars of nationality of origin in certain connections, and subsection (4) follows section 200 (9) of the 1948 Act, with regard to disclosing a former christian name or surname where that former name has been disused for 20 years, while subsection (5) enables any of those particulars to be removed from the register if already registered before the operation of the section and a registration which has been made only by reason of a change of name here referred to may be cancelled.

Section 14 of the Registration of Business Names Act, 1916.—See Appendix III, *post*. The Registrar is now empowered to refuse to register any name which is in his opinion undesirable. Cf. a similar power conferred on the Board of Trade in regard to the registration of companies by section 17 of the 1948 Act, *ante*.

Registration . . . refused under the said section 14.—I.e., under that section as amended by subsection (1), *supra*.

Shall be liable under section 7 thereof . . . statement of particulars with respect to that name.—The penalties imposed by section 7 of the Registration of Business Names Act, 1916, for the default there mentioned is a fine of up to £5 on summary conviction for every day during which the default continues. The persons liable are every partner in the firm or the person in default (see Appendix III, *post*). These persons are now made liable to the same penalty for carrying on business in a name registration of which has been refused.

So much of any provision . . . as requires a person's nationality of origin to be stated.—Provisions of the Registration of Business Names Act, 1916, which require the nationality of origin to be stated are : *ibid.*, section 3 (1) (a), (c) (as regards particulars to be given on registration) ; *ibid.*, section 18 (1) (a), (b) (as regards particulars to be included in trade catalogues, circulars, etc.) ; and the Schedule to the Act (as regards additional particulars required, under *ibid.*, section 2, where the firm carries on business as nominee or trustee, of the person on whose behalf the business is carried on). The nationality of origin is no longer required under any of these provisions. Cf. a similar provision in section 200 (2) of the 1948 Act, with respect to particulars of directors of companies to be stated in the register of directors and secretaries.

Section 22 of the Registration of Business Names Act, 1916 . . . references . . . to a former christian name . . . or to a change of name.—That section is the interpretation section of that Act. The principal effect of the change introduced by this subsection is that the references to a natural-born British subject are now omitted. The provisions of that Act which are affected are those set out, *supra*.

Subsection (4) (a) and (b).—Cf. section 200 (9) of the 1948 Act, *ante*.

By virtue of the last foregoing subsection.—See subsection (4) (b), *supra*. Where a person or firm has registered because of a change of name referred to in that paragraph, he or it may have the registration removed from the register.

117. Prevention of fraud (unit trusts).—(1) In the Schedule to the Prevention of Fraud (Investments) Act, 1939 (which relates to the constitution of an authorised unit trust scheme for the purposes of that Act)—

- (a) in paragraph 1 for the reference to the sale price of units there shall be substituted a reference to the manager's prices for units on a sale and a purchase respectively ; and at the end of that paragraph there shall be inserted the words " and for entitling the holder of any units to require the manager to purchase them at a price calculated accordingly " ; and
- (b) in paragraph 2 (which relates among other things to securing that the property will be vested in the trustee before unit certificates are issued) after the words " will be vested in him " there shall be inserted the words " or, subject to any prescribed conditions, in a nominee for him approved by the Board of Trade " ; and
- (c) after paragraph 2 there shall be inserted the following paragraph—
 " 2A. For prohibiting or restricting the issue by or on behalf of the manager of advertisements, circulars or other documents containing any statement with respect to the sale price of units, or the payments or other benefits received or likely to be received by holders of units, or containing any invitation to buy units, unless the document in question also contains a statement of the yield from the units."

(2) The terms of any trust created before the coming into force of this section in pursuance of a unit trust scheme may, notwithstanding anything in any deed, be varied or supplemented by a deed made between the trustee and the manager under the scheme, and containing such provisions as may be certified by the Board of Trade to be consequential on the passing of the foregoing subsection.

(3) The Board of Trade may appoint one or more competent inspectors to investigate and report on the administration of any unit trust scheme within the meaning of the said Act, if it appears to the Board—

- (a) that it is in the interests of unit holders so to do ; and
- (b) that the matter is one of public concern ;

and [section one hundred and sixty-seven of the Companies Act, 1948, subsection (1) of section one hundred and sixty-eight thereof and so much of subsection (2) of that section as relates to forwarding a copy of the inspector's report to the registered office of the company shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section one hundred and sixty-four of that Act, but with the substitution for references to the company or other body corporate and its affairs of references to the manager under the scheme and to the administration of the scheme].

(4) The expenses of any investigation under the last foregoing subsection shall be defrayed by the Board of Trade out of moneys provided by Parliament.

NOTES

General effect of section.—The words in square brackets were substituted by the 1948 Act, Sixteenth Schedule, paragraph 6. The section amends the provisions governing authorised unit trust schemes under the Prevention of Fraud (Investments) Act, 1939; 32 Halsbury's Statutes 119. The matters for which a trust deed pursuant to such a scheme must make provision as set out in the Schedule to that Act are augmented by amendments to paragraphs 1 and 2 of that Schedule, and a new paragraph is added (subsection (1)) while existing schemes may be varied or supplemented by a deed made after the coming into force of the section and containing such provisions as may be certified by the Board of Trade as consequential on the passing of subsection (1), *supra* (subsection (2)).

The Board of Trade may institute an investigation into the administration of any unit trust scheme in certain circumstances and may appoint inspectors for the purpose. Such inspectors will have all the powers of an inspector appointed under section 164 of the 1948 Act (as to which, see generally the notes to that section, *ante*) (subsection (3)) and the expenses of such an investigation are to be met by the State (subsection (4)).

Authorised unit trust scheme.—The Prevention of Fraud (Investments) Act, 1939; 32 Halsbury's Statutes 140; prohibits the carrying on of a business dealing in securities (defined in *ibid.*, section 26 (1)) except under the authority of a principal's licence or a representative's licence (defined in *ibid.*, section 1(1)) unless expressly exempt under the Act. Among those exempt from these provisions are authorised unit trust schemes. These are schemes declared to be authorised by the Board of Trade if satisfied that certain conditions have been fulfilled, one of which is that the trust must be expressed in a deed providing for certain matters which are set out in the Schedule to the Act (*ibid.*, section 16 (1)). For the general provisions of the Act, see 32 Halsbury's Statutes 120 *et seq.*

Paragraph 1.—Paragraph 1 of the Schedule to the Act (which lays down the matters for which provision must be made in a scheme) requires a provision to be made for determining the manner in which the sale price of units and the yield therefrom are to be respectively calculated. This will now read "For determining the manner in which the manager's prices for units on a sale and a purchase respectively are to be calculated and for entitling the holder of any units to require the manager to purchase them at a price calculated accordingly".

Paragraph 2.—This paragraph requires provision to be made for regulating the mode of execution and the issue of unit certificates and, in particular, for securing that no unit certificate should be executed or issued in respect of rights or interests in property until steps have been taken to the satisfaction of the trustee to secure that the property will be vested in him. To this must now be added the words "or, subject to any prescribed conditions, in a nominee for him approved by the Board of Trade".

2A.—new paragraph.—This new paragraph makes the requirement with regard to the advertisement of unit trusts slightly more elastic and enables the Board of Trade to impose restrictions under section 16 of the 1939 Act.

The Board of Trade may appoint one or more competent inspectors . . . the matter is one of public concern.—Cf. sections 164, 165 of the 1948 Act. The powers of the Board of Trade are exercisable under this section, however, only where (a) it is in the interests of unit holders; and (b) where the matter is one of public concern.

* * * * *

122. Construction and application of principal Act and this Act.—(1) In this Act the expression "the principal Act" means the Companies Act, 1929. . . .

NOTE

The remainder of this section was repealed by the 1948 Act (see *ibid.*, Seventeenth Schedule, Part 1).

123. Short title, citation, commencement and repeal.—(1) This Act may be cited as the Companies Act, 1947, *and this Act and the principal Act may be cited together as the Companies Acts, 1929 and 1947.*

(2) This Act shall come into force on such day as the Board of Trade may by order appoint, and different days may be appointed for the purpose of different provisions thereof.

(3) The provisions of the principal Act specified in Part I of the Ninth Schedule to this Act and the provisions of the Registration of Business Names Act, 1916, specified in Part II thereof are hereby repealed to the extent specified in that Schedule.

NOTE

The words in italics in subsection (1), and subsection (3) in so far as it relates to Part I of the Ninth Schedule are repealed by the 1948 Act (see *ibid.*, Seventeenth Schedule, Part I).

* * * * *

NINTH SCHEDULE

PART II

ENACTMENTS OF REGISTRATION OF BUSINESS NAMES ACT, 1916, REPEALED

In subsection (1) of section three, the words "and if that nationality is not the nationality of origin, the nationality of origin", in both places where they occur.

In subsection (1) of section eighteen, the words "and if his nationality is not his nationality of origin his nationality of origin" in paragraph (a), and the words "and if the nationality is not the nationality of origin, the nationality of origin" in paragraph (b).

In section twenty-two, in the definition of a former christian name or surname, the words from the first "shall not", to "and", and in the definition of a change of name the words from the first "in the case of", to the first "or".

In the Schedule, the words "and if that nationality is not the nationality of origin, the nationality of origin".

NOTE

As to effect of repeals, see section 38 (2) of the Interpretation Act, 1889; 18 Halsbury's Statutes 1005. Part I of this Schedule was repealed by the 1948 Act (see *ibid.*, Seventeenth Schedule, Part I).

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APPENDIX I

TABLES OF REPEALS AND REPLACEMENTS

Table I is a table of repeals and replacements of the Companies Act, 1929. In the left hand column the sections of the 1929 Act are set out, whilst the right hand column shows either the corresponding section or subsection of the Companies Act, 1948, or if the 1929 Act section has been repealed, the relevant section of the repealing Act. Table II similarly sets out the provisions of the Companies Act, 1947, in the left hand column and the corresponding sections of the 1948 Act in the right hand column. Table III contains miscellaneous Acts similarly dealt with.

I

THE COMPANIES ACT, 1929

Section of 1929 Act	Corresponding Section of 1948 Act	Section of 1929 Act	Corresponding Section of 1948 Act
1	1	34 (3)	41 (3)
2	2	(4)	41 (2)
3	3	(5)	41 (4)
4	4	35	38
5 (1)	5 (1)	36	42
5 (2)-(7)	Rep. 1947, s. 123, Sched. IX Pt. I.	37 (1)	43 (1), (2), 46
6	6	(2)	43 (4)
7 (1)	7 (1)	(3)	Rep. 1947, s. 123, Sched. IX, Pt. I.
(2)	7 (1), (2)	(4)	40 (3), 43 (5)
(3)	7 (3)	38	45
8	8	39	47
9	9	40 (1)	48 (1)
10	10	(2)	48 (3)
11	11	(3)	48 (4)
12	12	41	49
13	13	42	52
14	14	43	53
15	15	44 (1)	Sched. VIII.
16	16	(2)	Rep. 1947, s. 123 Sched. IX, Pt. I
17	Rep. 1947, s. 123, Sched. IX, Pt. I.	45 (1)	54 (1)
18 (1)	19 (1)	(2)	Sched. VIII.
(2)	19 (3)	(3)	54 (2)
(3)	19 (1), (4)	46 (1)	58 (1)
(4)	19 (5)	(2)	Sched. VIII.
(5)	19 (7)	(3)	58 (2)
19 (1)	18 (1)	(4)	58 (4)
(2)	18 (2)	(5)	58 (5)
(3)	19 (7)	47 (1)	57 (1)
(4)	18 (3), 19 (7)	(2)	57 (2)
(5)	18 (4), 19 (7)	(3)	57 (3), Sched. VIII.
20	20	48	59
21	21	49	60
22	22	50	61
23	24	51	62
24	25	52	63
25	26	53	64
26	28	54 (1)	65 (1), Sched. VIII.
27 (1)	30 (1)	(2)	Rep. 1947, s. 123, Sched. IX, Pt. I.
(2)	30 (3)		66
(3)	29		67
28	31		68
29	32	55	69
30	33	56	70
31	34	57	71
32	35	58	72
33	36	59	
34 (1)	37	60	
(2)	41 (1)	61	

Section of 1929 Act	Corresponding Section of 1948 Act	Section of 1929 Act	Corresponding Section of 1948 Act
62 (1)	73	108 (3)	124 (1), Sched. VI.
(2)	74	(4)	124 (1)
63	75	(5)	Rep. 1947, s. 123, Sched. IX, Pt. I.
64	76	109 (1)	125 (1)
65	77	(2)	125 (2)
66	78	110 (1)	126 (1)
67	80	(2)	Rep. 1947, s. 123, Sched. IX, Pt. I.
68	81	(3)	127 (1), (2), (4), 129 (1)
69	82	(4)	124 (3), 125 (3), 126 (2), 127 (3)
70	83	(5)	124 (4), 125 (4), 126 (2), 127 (3)
71	84	111	128
72	85	112 (1)	131 (1)
73 (1)	87 (1), (6)	(2)	131 (5)
(2)	87 (2)	(3)	131 (2)
(3)	87 (3)	113	130
(4)	87 (4)	114	132
(5)	87 (5)	115 (1)	133 (1), (2), 134
74	89	(2)	135 (1), (2)
75 (1)	90 (1)	116	139
(2)	90 (2)	117 (1)-(3)	141 (1)-(3)
(3)	Sched. VIII.	(4)	Rep. 1947, s. 123, Sched. IX, Pt. I.
(4)	90 (3)	(5)	141 (4)
(5)	90 (4)	(6)	141 (5)
(6)	91	118	143
76	92	119	144
77	93	120	145 (1)-(3)
78 (1)	94 (1)	121	146
(2)	94 (3)	122 (1)	147 (1)
(3)	94 (5)	(2)	147 (3)
79	95	(3)	147 (4)
80	96	123 (1)	148 (1)
81	97	(2)	148 (2), 157 (1)
82 (1)-(3)	98 (1)-(3)	(3)	148 (3), 157 (3)
(4)	Rep. 1947, s. 123, Sched. IX, Pt. I.	124	Sched. VIII.
83	99	125	Sched. VIII.
84	100	126	Rep. 1947, s. 123, Sched. IX, Pt. I.
85	101	127	Rep. 1947, s. 123, Sched. IX, Pt. I.
86	102 (1)-(3)	128 (1)	197 (1)
87	103	(2)	197 (2)
88	104	(3)	Rep. 1947, s. 123, Sched. IX, Pt. I.
89	105	(4)	197 (3)
90	106	(5)	Rep. 1947, s. 123, Sched. IX, Pt. I.
91	—	129 (1)	155 (1), 156 (1), 162 (2)
92	107	(2)	155 (2)
93	108	(3)	155 (3), 156 (3)
94	109	130 (1)	158 (1), (2), (3)
95 (1)	110 (1)	(2)	158 (4)
(2)	110 (4)	131	433
96 (1)	111 (1)	132 (1)	159 (1)
(2)	111 (2)	(2)	Rep. 1947, s. 123, Sched. IX, Pt. I.
(3)	111 (4)	(3)	Rep. 1947, s. 123, Sched. IX, Pt. I.
97	112	(4)	159 (5)
98 (1)	110 (2), 113 (1)	(5)	159 (6)
98 (2)-(4)	113 (2)-(4)	(6)	Rep. 1947, s. 123, Sched. IX, Pt. I.
99	115		
100	116		
101	117		
102	118		
103	119		
104	120		
105	121		
106	122		
107 (1)	123 (1)		
(2)	123 (2)		
108 (1)	124 (1), Sched. VI.		
(2)	124 (1), Sched. VI.		

Section of 1929 Act	Corresponding Section of 1948 Act	Section of 1929 Act	Corresponding Section of 1948 Act
133 (1)	161 (2)	164	Rep. 1947, s. 123, Sched. IX, Pt. 1.
(2)	161 (5)	165	219
(3)	Rep. 1947, s. 123, Sched. IX, Pt. 1.	166	220
134 (1)	162 (1)	167	221
(2)	162 (3)	168	222
(3)	Rep. 1947, s. 123, Sched. IX, Pt. 1.	169	223
135 (1)	164 (1)	170	224
(2)	164 (2)	171 (1)	225 (1)
(3)	167 (1)	(2)	225 (3)
(4)	167 (2)	172	226
(5)	167 (3)	173	227
(6)	168 (1), (2)	174	228
136 (1)	169 (1)	175	229
(2)	169 (2)	176	230
(3)	Rep. 1947, s. 123, Sched. IX, Pt. 1.	177	231
(4)	Rep. 1947, s. 123, Sched. IX, Pt. 1.	178	232
137	Rep. 1947, s. 123, Sched. IX, Pt. 1.	179	233
138	171	180	234
139	176	181	235
140 (1)	181 (1)	182	236
(2)	181 (2)	183	237
(3)	181 (4)	184	238
(4)	181 (5)	185	239
141	182	186	240
142	187	187	241
143	180	188	242
144 (1)	200 (1), (2)	189	243
(2)	200 (4), (5)	190	244
(3)	200 (6)	191	245
(4)	200 (7)	192	246
(5)	200 (8)	193	247
(6)	200 (9)	194	248
45 (1)-(3)	201 (1)-(3)	195	249
(4)	200 (9), 201 (4)	196	250
146	202	197	251
147	203	198	252
148	Rep. 1947, s. 123, Sched. IX, Pt. 1.	199	253
149	199	200	254
150 (1)	192 (1)	201	255
(2)	192 (2)	202	256 (1), (2)
(3)	193 (1)	202 (2)	256 (2)
(4)	193 (2), (3)	203	257
(4a)	193 (3), (4)	204	258
(4b)	193 (5)	205	259
(5)	194 (2)	206	260
150 (6)	194 (4)	207	261
151	204	208	262
152	205	209	263
153 (1)-(4)	206 (1)-(4)	210	264
(5)	206 (6)	211	265
154	208	212	266 (1)
155 (1)	209 (1)	213	267
(2)	209 (3)	214	268
(3)	209 (4)	215	269
(4)	209 (5)	216	270
156	211	217	Rep. 1947, s. 123, Sched. IX, Pt. 1
157	212	218	271
158	213	219	272
159	214	220	273
160	215	221	274
161	216	222	275
162	217	223	276
163	218	224	277
		225	278
		226	279
		227	280
		228	281

APPENDIX I

Section of 1929 Act	Corresponding Section of 1948 Act	Section of 1929 Act	Corresponding Section of 1948 Act
229	282	277 (5)	334 (4)
230 (1)	283 (1)	(6)	334 (5)
(2)	283 (2)	(7)	334 (6)
(3)	283 (4)	(8)	Rep. 1947, s. 123, Sched. IX, Pt. I
231	284	278 (1), (2)	335
232	285	(3)	Rep. 1947, s. 123, Sched. IX, Pt. I
233	286	279	337
234	287	280	338
235	289	281	339
236	290 (1)-(5)	282	340
237	292	283	341
238	293	284 (1)	342 (1)
239	294	(2)	Rep. 1947, s. 123, Sched. IX, Pt. I
240	295	(3)	342 (2)
241	296	285	343
242	297	286	344
243	298	287	345
244	299	288	346
245	300 (1)-(5)	289	347
246	301	290	348
247	302	291	349
248	303	292	350
249	304	293	351 (1), (2)
250	305	294	352
251	306	295	353
252	307 (1), (2)	296	354
253	308	297	357
254	309	298	358 (1)
255	310	299	359
256	311	300	360
257	312	301	361
258	313	302	362 (1)-(4)
259	314	303	363
260	315	304	364
261	316	305	365 (1)-(4)
262	317	306 (1)	366
263	318	(2)	366
264 (1)	319 (1), (2)	(3)	Rep. 1947, s. 123, Sched. IX, Pt. I
(2)	319 (3)	307	368
(3)	319 (4)	308	370
(4)	319 (5)	309	371 (1), (3)
(5)	319 (6)	310	374
(6)	319 (7)	311	375
(7)	319 (8)	312	424
265 (1)	320 (1)	313	425
(2)	320 (1)	314 (1)	426 (1), 427 (1)
(3)	320 (2)	(2)	426 (2)
265 (4)	320 (3)	(3)	426 (3)
266	322 (1)	(4)	426 (5)
267	323	315	428
268	325	316	377
269 (1)	326 (1)	317	378
(2)	326 (2)	318	379
(3)	326 (4)	319	380
(4)	326 (5)	320	381
270	327	321	382
271	328	322	383
272	329	323	384
273	330	324	385
274	331	325	386
275 (1)-(3)	332 (1)-(3)	326	387
(4), (5)	Rep. 1947, s. 123, Sched. IX, Pt. I	327	425 (1)
(6)	332 (4)	328	389
(7)	332 (1)	329	390
276	333	330	391
277 (1)-(3)	334 (1)-(3)		
(4)	Rep. 1947, s. 123, Sched. IX, Pt. I		

Section of 1929 Act	Corresponding Section of 1948 Act	Section of 1929 Act	Corresponding Section of 1948 Act
331	392	372 (1)	448 (1)
332	393	(2)	448 (2)
333	394	(3)	448 (3)
334	395	(4)	448 (1)
335	396	373	449
336	397	374*	—
337	398	375	450
338 (1)	399 (1), (2), (3), (4), (5), (6), (7), (8), (9)	376	451
(2)	400	377	452
(3)	405	378	453
339	401	379 (1), (2)	454 (2)
340	402	380 (1)	455 (1)
341	403	(2)	455 (2)
342	404	381	—
343	406	382	—
344 (1)	407 (1), (2), (3)	383	460 (1)
(2)	407 (3)	384	461 (1)
(3)	407 (3)	385	—
345	408	Sched. I	Sched. I
346	409	Sched. II	Sched. II
347	410	Sched. III	Sched. III
348	411	Sched. IV,	Rep. 1947, s. 123,
349	412	Pt. I,	Sched. IX
350	413	Sched. IV,	Sched. IV,
351	414	Pt. I, 2	Pt. I, 1
352	415	Sched. IV,	Sched. IV,
353	416	Pt. I, 3	Pt. I, 2
354 (1)	417 (1), (3)	Sched. IV,	Sched. IV,
(2)	420 (1)	Pt. I, 4	Pt. I, 3
(3)	417 (5)	Sched. IV,	Sched. IV,
(4)	423 (1)	Pt. I, 5	Pt. I, 4
(5)	423 (2)	Sched. IV,	Sched. IV,
(6)	422	Pt. I, 6	Pt. I, 6
(7)	421	Sched. IV,	Sched. IV,
355 (1)	423 (3)	Pt. I, 7	Pt. I, 8
(2)	417 (1)	Sched. IV,	Sched. IV,
(3)	417 (2)	Pt. I, 8	Pt. I, 9
(4)	417 (4)	Sched. IV,	Sched. IV,
356	417 (6)	Pt. I, 9	Pt. I, 10
	Rep. as from	Sched. IV,	Pt. I, 11
	August 8, 1944,	Pt. I, 10	Sched. IV,
	by the Prevention	Pt. I, 11	Pt. I, 12
	of Fraud	Sched. IV,	Sched. IV,
	(Investments) Act,	Pt. I, 12	Pt. I, 13
	1939, s. 25	Sched. IV,	Sched. IV,
	and S.R. & O.,	Pt. I, 13	Pt. I, 14
	1944, No. 864.	Sched. IV,	Sched. IV,
357	434 (1)	Pt. I, 14	Pt. I, 15
358	429	Sched. IV,	Sched. IV,
359	430	Pt. I, 15	Pt. I, 16
360	431	Sched. IV,	Sched. IV,
361	432	Pt. I, 16	Pt. I, 17
362	438	Sched. IV,	Sched. IV,
363	Rep. by the False	Pt. I, 17	Pt. I, 18
	Oaths (Scotland)	Sched. IV,	Sched. IV,
	Act, 1933, s. 8,	Pt. II, 1	Pt. II, 19
	Sched.	Sched. IV,	Sched. IV,
364	439	Pt. II, 2	Pt. II, 20
365	440	Sched. IV,	Sched. IV,
366	442 (1)	Pt. III, 1	Pt. III, 22
367	444	Sched. IV,	Sched. IV,
368	445	Pt. III, 2	Pt. III, 23
369	446	Sched. IV,	Sched. IV,
370	437	Pt. III, 3	Pt. III, 24
371	447	Sched. IV,	Sched. IV,
		Pt. III, 4	Pt. III, 26

* This section is not reproduced. See section 459 (5) and the Administration of Justice (Scotland) Act, 1933, sections 16-18.

Section of 1929 Act	Corresponding Section of 1948 Act	Section of 1929 Act	Corresponding Section of 1948 Act
Sched. IV, Pt. III, 5	Sched. IV, Pt. III, 27	Sched. VII	Sched. XIII
Sched. IV, Pt. III, 6	Sched. IV, Pt. III, 28	Sched. VIII	206 (5), Sched. X
Sched. V	Sched. V	Sched. IX	Sched. XI
Sched. VI	Sched. VI	Sched. X	Sched. XII
		Sched. XI	Sched. XV
		Sched. XII	—

II

THE COMPANIES ACT, 1947

Section of 1947 Act	Corresponding Section of 1948 Act	Section of 1947 Act	Corresponding Section of 1948 Act
1 (1)	131 (1)	22 (2)	162 (3), (4)
(2)	131 (2)	23	161 (1)–(4)
(3)	131 (3)	24 (1)	159 (1), (2), (3)
(4)	131 (4), (5)	(2)	159 (4)
(5)	131 (5)	(3)	160 (1)
2 (1)	133 (1), (2)	(4)	160 (2)
(2)	133 (3)	(5)	160 (3)
(3)	141 (2), (4)	(6)	159 (2)
(4)	130 (2), 158 (1), 159 (5)	(7)	159 (5), 160 (4)
(5)	130 (2), 158 (1)	(8)	159 (7), Sched. VIII
(6)	142	25	163
3	140	26 (1)	176, 177 (1), 178
4 (1)	137 (1)	(2)	235 (2)
(2)	137 (2)	(3)	177 (2)
(3)	—	(4)	179
5 (1)–(4)	136 (1)–(4)	27 (1)	125 (1), 200 (1), (3), (4), (7), Sched. VI
(5)	138, 141 (4)		200 (3)
(6)	136 (5), 138	(2)	200 (5)
6	131 (2), 135 (1)	(3)	200 (4)
7	143 (1)	(4)	—
8	145 (4)	(5)	200 (2) 201, (1)
9	210	(6)	200 (2), (9)
10	72 (2)	(7)	200 (9)
11 (1)	209 (1)	(8)	183
(2)	209 (1)	28	184
(3)	209 (2)	29	185
(4)	209 (2)	30	186
(5)	209 (3)	31	181 (3)
(6)	209 (6)	32	188
12 (1)	147 (2)	33	189
(2)	147 (3)	34	190
13 (1)	149 (1)	35	191
(2)	149 (2)	36 (1)	193 (1)
(3)	149 (3)	(2)	193 (3)
(4)	149 (4)	(3)	193 (3), (4), (5)
(5)	149 (5)	(4)	193 (3)
(6)	149 (6)	(5)	194 (1)
(7)	157 (1)	(6)	194 (3)
(8)	147 (3), 149 (7)	(7)	195
14	150	37	196
15	151	38 (1)–(9)	—
16	152	(10)	197 (1)
17	153	39 (1)	197 (1), (2)
18	154	(2)	197 (4)
19	157 (2)	(3)	207 (1)
20	147 (4), 148 (3), 149 (6), 150 (3), 157 (3)	(4)	207 (2)
21 (1)	156 (1), (2)	(5)	207 (3)
(2)	156 (3)	(6)	207 (4)
(3)	158 (1)	(7)	206 (6)
(4)	158 (1), (4)	41 (1)	198 (1), 207 (5)
22 (1)	162 (1), 438, Sched. XV	(2)	198 (2)
		(3)	198 (3), 207 (5)

Section of 1947 Act	Corresponding Section of 1948 Act	Section of 1947 Act	Corresponding Section of 1948 Act
41 (4)	198 (4), 207 (5)	62 (2)	Sched. IV, Pt. II, 19, 20, Pt. III,
(5)	199 (3)		27
42 (1)	164 (1), (2)	(3)	Sched. IV, Pt. II, 19, 20
(2)	167 (1)	(4)	Sched. IV, Pt. II, 19
(3)	167 (5)	(5)	Sched. IV, Pt. II, 21
(4)	167 (4)	(6)	Sched. IV, Pt. III, 30
(5)	166	(7)	Sched. IV, Pt. III, 29
(6)	167 (1), (2), (3), (5), 169 (1), (2)	63 (1)	40 (1), (2)
(7)	168 (2)	(2)	41 (1)
(8)	168 (1), (2), 169 (1), 171	63 (3)	41 (1)
43 (1)	165	(4)	41 (2), (3)
(2)	166, 167 (1), (2), (3), (4), (5), 168 (1), (2), 169 (1), (2), 171	(5)	41 (4)
(3)	168 (2)	(6)	426 (1)
(4)	—	64 (1)	38 (5)
44 (1)	169 (3)	(2)	39 (1)
(2)	169 (4)	(3)	39 (2), 50 (7)
(3)	169 (5)	(4)	41 (1), (2), (3), (4), 426 (1)
(4)	—	65 (1)	43 (1), (2), (3), (4)
45	170	(2)	43 (4)
46	172	(3)	43 (2)
47	173	(4)	—
48	174	66	44
49	175	67 (1)	30 (1)
50 (1)	110 (2)	(2)	30 (1), 48 (1), Scheds. III, V
(2)	111 (3), 120 (3)	(3)	30 (2), 48 (2)
(3)	110 (3)	(4)	Scheds. III, V
(4)	110 (4), 111 (4), 120 (7)	(5)	30 (4), 48 (5)
(5)	114, 120 (7)	(6)	30 (3), 48 (4)
51	110 (1)	(7)	438, Sched. XV
52 (1)	124 (1), 125 (1)	68 (1)	55 (1)
(2)	124 (1), 126 (1), Sched. VI	(2)	55 (2)
(3)	—	(3)	30 (5), 46, 48 (6)
53 (1)	125 (1), Sched. VI	(4)	30 (5), 40 (3), 46, 48 (6)
(2)	127 (1), (2)	69 (1)	74
(3)	124 (1)	(2)	110 (1), 112 (1)
(4)	124 (2)	70	79
(5)	124 (1)	71 (1)	58 (1)
(6)	Sched. VI	(2)	58 (3)
54	129	(3)	Scheds. III, V, VIII
55 (1)	126 (1), 127 (1), 128	(4)	58 (5)
(2)	438, Sched. XV	72 (1)	56 (1)
56	107 (1), (2)	(2)	Sched. VIII
57	108 (1), (4)	(3)	56 (2)
58	Still in force	(4)	58 (1)
59	50 (1)-(6)	(5)	56 (3)
60 (1)-(4)	51 (1)-(4)	73	54 (1)
(5)	109 (1)	74 (1)	86 (1), (2), (3), 125 (1), Sched. VI
(6)	51 (5)	(2)	87 (1), (2)
(7)	51 (6)	75	88
61 (1)	Sched. IV, Pt. I, 5, 7, 9, 12, 13, 14, Pt. III, 25	76 (1)	5 (1), (10)
(2)	Sched. IV, Pt. I, 9, 10	(2)	5 (1)
(3)	—	(3)	5 (2)
(4)	Sched. IV, Pt. III, 22, 23, 24, 26	(4)	5 (3)
62 (1)	Sched. IV, Pt. II, 19, 20	(5)	5 (4)
		(6)	5 (5)
		(7)	5 (6), 19 (6)
		(8)	5 (7)

Section of 1947 Act	Corresponding Section of 1948 Act	Section of 1947 Act	Corresponding Section of 1948 Act
76 (9)	5 (8)	96 (1)	—
(10)	5 (9), (10)	(2)	29
77 (1)	23 (1)	(3)	274 (1)
(2)	23 (2)	(4)	325 (1), 326 (3)
(3)	23 (1), (3)	97 (1)	256 (3), 307 (3),
(4)	23 (1)		460 (2)
(5)	23 (4)	(2)	274 (2)
78 (1)	17	(3)	279 (1), 305 (1)
(2)	18 (2)	(4)	249 (4)
(3)	388	(5)	249 (5)
(4)	—	(6)	—
79 (1)	19 (2), 389	(7)	266 (2)
(2)	19 (2), (3), (4), (5), (7)	98	343 (1)
80	27	99	460 (1)
81 (1)	7 (1), (2), Sched. XII	(1)	324 (1), 356 (1)
(2)	7 (3), 425 (1), Sched. XII	(2)	324 (2), 356 (1)
(3)	425 (1), Sched. XII	(3)	324 (3), 356 (1)
82 (1)	32 (4)	(4)	356 (2)
(2)	427 (3)	100	355
83	367	101 (1)	332 (1), (2), (3)
84 (1)-(5)	372 (1)-(5)	(2)	332 (3)
(6)	372 (6), 374 (1)	(3)	331 (1), 458 (2)
(7)	372 (7), 438, Sched. XV	(4)	—
85 (1)-(5)	373 (1)-(5)	(5)	336, 460 (1)
(6)	426 (1)	102	441
(7)	426 (4)	103 (1)	443 (1), (9)
(8)	373 (6), 426 (1)	(2)-(8)	443 (2)-(8)
86 (1)	375 (1), (2), (3)	(9)	443 (10)
(2)	375 (1)	104 (1)	442 (1), (4)
87 (1)	369 (1)	(2)	442 (2)
(2)	369 (2)	(3)	442 (3)
(3)	371 (2)	(4)	442 (4)
(4)	369 (3), 371 (4)	105 (1)	52 (3), 78 (2), 80 (2), 96 (3), 105 (2), 131 (5), 155 (3), 156 (3), 158 (3), 331 (1), 433 (4)
88	376	(2)	130 (9)
89 (1)	95 (2), 458 (1)	(3)	201 (3), (4)
(2)	—	(4)	48 (4), 338 (2), 370 (2), 414
(3)	100	106	—
(4)	—	107 (1)	377, 378, 379, 380, 381, 394 (3), (6)
90	225 (2)	(2)	395 (2)
91 (1)	319 (1), (2)	(3)	399 (1)
(2)	319 (1)	108	435 (1)-(4)
(3)	358 (1)	109 (1)	427 (1), (2)
(4)	319 (8), 358 (2)	(2)	—
(5)	319 (1), (4), 358 (1), (2)	110 (1)	417 (1), (3), 419 (1), 421, 422
(6)	319 (8), 358 (2)	(2)	420 (1)
(7)	319 (8)	(3)	426 (1)
(8)	94 (1), (2), (4), 319 (9), 358 (3)	(4)	420 (2)
92 (1)	320 (1), (3)	(5)	417 (5), 418 (1), (2), 420 (1), (2)
(2)	321 (1)	(6)	419 (1), 420 (1), 422
(3)	321 (2)	(7)	419 (2), 423 (1), (3)
(4)	321 (3)	111	408
93 (1)	322 (1)	112 (1)	410 (1), (2)
(2)	322 (1)	(2)	410 (1)
94 (1)	283 (1), (2)	(3)	438, Sched. XV
(2)	283 (3)	113 (1)	407 (1), (2), 409, 415
(3)	288 (1), (2)	(2)	407 (2)
(4)	291	114	411
(5)	283 (5), 288 (1)		
95 (1)	289 (1), 299 (1)		
(2)	290 (6), 300 (6)		
(3)	253 (7), 295 (2)		
(4)	303 (1), 315 (1)		

Section of 1947 Act	Corresponding Section of 1948 Act	Section of 1947 Act	Corresponding Section of 1948 Act
115	Still in force	123	—
116	Still in force	Sched. I	Sched. VIII
117	Still in force	Sched. II	Sched. IX
118 (1)	456, Sched. XVI	Sched. III	Sched. VII
118 (2)	456, 457, Sched. XVI	Sched. IV	Scheds. III, V
(3)	456, Sched. XVI	Sched. V	52 (3), 78 (2), 80 (2), 96 (3), 105 (2), 131 (5), 155 (3), 156 (3), 158 (3), 331 (1), 433 (4)
119	436		
120 (1)	454 (1)		
(2)	454 (2)		
(3)	65 (1), 322 (1), 362 (4), 459 (2)		
121 (1)	454 (3)	Sched. VI	Sched. XIV
(2)-(4)*	—	Sched. VII 1 (a)	71, 338 (2), 370 (2), 440 (2)
122 (1)	455 (1), 456	(b)	104 (2), 328 (1), 329, 330, 334 (1), (2), (4)
(2)	455 (1)	(c)	108 (4), 205
(3)	455 (4)	(d)	205, 450 (2)
(4)	71, 104 (2), 108 (4), 161 (2), 162 (3), 197 (1), 205, 235 (2), 236 (2), 269, 270 (1), 328 (1), (3), 329, 330, 334 (1), (2), (4), 338 (2), 353 (7), 370 (2), 440 (2), 448 (1), 450 (2), 455 (1)	(e)	236 (2), 269, 270 (1)
(5)	455 (1)	(f)	161 (2), 197 (1), 270 (1), 353 (7)
(6)	455 (3)	(g)	270 (1)
(7)	1 (1), 15 (1), 234, 399 (1), 416, 425 (2), 428 (1), 440 (1), (2), 442 (1), 444, 445, 449, 450 (1), 451, 452, 453 (1), 461 (1), Sched. XII	(h)	235 (2)
		(i)	162 (3)
		(j)	448 (1)
		2	328 (3)
		Sched. VIII	1 (1), 15 (1), 234, 399 (1), 416, 425 (2), 428 (1), 440 (1), (2), 442 (1), 444, 445, 449, 450 (1), 451, 452, 453 (1), 461 (1), Scheds. VIII, XII
		Sched. VIII	—
		Sched. IX	—

III

MISCELLANEOUS ENACTMENTS

Short title and section of Act replaced	Corresponding section of 1948 Act
Workmen's Compensation (Coal Mines) Act, 1934, s. 3 (6)	94 (1), 319 (1)
Unemployment Insurance Act, 1935, s. 20 (1)	94 (1), 319 (1), 358 (1)
National Health Insurance Act, 1936, s. 177 (1)	94 (1), 319 (1), 358 (1)
Widows', Orphans' and Old Age Contributory Pensions Act, 1936, s. 13 (1)	94 (1), 319 (1), 358 (1)
Finance Act, 1937, Sched. V, Pt. III, 5	94 (1), 319 (1)
War Risks Insurance Act, 1939, s. 5	434 (2)
Finance (No. 2) Act, 1939, s. 21 (2)	94 (1), 319 (1)
Finance Act, 1942, s. 20 (2)	319 (1)
(3)	94 (1)
Reinstatement in Civil Employment Act, 1944, s. 18 (2)	319 (1)
(3)	94 (1)
(4)	94 (1), 319 (1), (2)
National Insurance (Industrial Injuries) Act, 1946, s. 71 (1)	94 (1), 319 (1), 358 (1)
National Insurance Act, 1946, s. 55 (1)	94 (1), 319 (1), 358 (1)

* See now The Statutory Instruments Act, 1946, sections 1 (2) and 4 (3), as to laying of regulations.

APPENDIX II SPECIMEN FORMS OF ACCOUNTS †

1. BLANK LIMITED BALANCE SHEET AT DECEMBER 31st, 1948 (a)

Previous Year	£	£	£	Previous Year (e)	£	£	£	£
I. CAPITAL—								
Authorised in shares of £1 each :								
Ordinary Shares	10,000							
8% Redeemable Preference Shares	30,000							
Issued in shares of £1 each fully paid :								
Ordinary Shares	10,000							
8% Redeemable Preference Shares redeemable at par	30,000							
Less : Nominal value of 5,000 shares redeemed during the year	5,000							
	25,000							
								35,000
<i>Note : The earliest date on which the company has power to redeem the above preference shares is July 31, 1948 (b).</i>								
II. CAPITAL REDEMPTION RESERVE FUND—								
Amount set aside out of profits this year								
III. SHARE PREMIUM ACCOUNT (c)								
Balance at January 1, 1948	5,000							
Less : Preliminary Expenses written off per contra	5,000							
IV. CAPITAL RESERVES—								
Surplus arising on book values after re-valuation in 1947	4,000							
V. REVENUE RESERVES—								
Dividend Equalisation Account :								
Balance at January 1, 1948	3,000							
Less : Amount transferred to Profit and Loss Account	2,000							
	1,000							
Profit and Loss Account, being undistributed balance at the end of the year	1,300							
	2,300							
VI. INCOME TAX RESERVE—								
Income Tax Schedule D 1949-50 (subject to agreement)	10,800							
Total Share Capital and Reserves	57,100							
VII. DEBENTURES—								
Authorised amount £10,000 :								
Amount issued and outstanding (<i>Secured on Plant and Machinery</i>)	5,000							
5% LOAN REPAYABLE BY 1950 (<i>Unsecured</i>)	2,000							
IX. CURRENT LIABILITIES—								
Sundry Trade Creditors and Accruing Expenses	13,500							
Interest accrued on Debentures and Fixed Loan	165							
Current Taxation 1948-49 (as agreed)	7,335							
Profit Tax on Profit for the year (subject to agreement)	2,500							
	23,500							
X. PROVISIONS—								
Contracts Contingencies Account	3,000							
Properties Repair Account :								
Balance at January 1, 1948	1,000							
Add : Amount transferred from Profit and Loss Account	2,000							
	3,000							
XI. DIVIDENDS RECOMMENDED FOR DISTRIBUTION—								
20% Ordinary Dividend for the year ended December 31, 1948, less tax at 9s. in the £								
<i>Notes : Contingent Liabilities not provided for in the liabilities as shown above—</i>								
(i) Amount uncalled in respect of Trade Investments £2,000.								
(ii) Commitments for Capital Expenditure at December 31, 1948 amounted to £10,000.								
(Signed) A. PENN } Directors (d)								
B. COACH								
	£94,700							£94,700

I. CAPITAL—
Authorised in shares of £1 each :
Ordinary Shares
8% Redeemable Preference Shares
Issued in shares of £1 each fully paid :
Ordinary Shares
8% Redeemable Preference Shares redeemable at par
Less : Nominal value of 5,000 shares redeemed during the year
25,000
35,000

II. CAPITAL REDEMPTION RESERVE FUND—
Amount set aside out of profits this year
III. SHARE PREMIUM ACCOUNT (c)
Balance at January 1, 1948
Less : Preliminary Expenses written off per contra
IV. CAPITAL RESERVES—
Surplus arising on book values after re-valuation in 1947
V. REVENUE RESERVES—
Dividend Equalisation Account :
Balance at January 1, 1948
Less : Amount transferred to Profit and Loss Account
Profit and Loss Account, being undistributed balance at the end of the year
VI. INCOME TAX RESERVE—
Income Tax Schedule D 1949-50 (subject to agreement)
Total Share Capital and Reserves
VII. DEBENTURES—
Authorised amount £10,000 :
Amount issued and outstanding (*Secured on Plant and Machinery*)
5% LOAN REPAYABLE BY 1950 (*Unsecured*)
IX. CURRENT LIABILITIES—
Sundry Trade Creditors and Accruing Expenses
Interest accrued on Debentures and Fixed Loan
Current Taxation 1948-49 (as agreed)
Profit Tax on Profit for the year (subject to agreement)
X. PROVISIONS—
Contracts Contingencies Account
Properties Repair Account :
Balance at January 1, 1948
Add : Amount transferred from Profit and Loss Account
XI. DIVIDENDS RECOMMENDED FOR DISTRIBUTION—
20% Ordinary Dividend for the year ended December 31, 1948, less tax at 9s. in the £
Notes : Contingent Liabilities not provided for in the liabilities as shown above—
(i) Amount uncalled in respect of Trade Investments £2,000.
(ii) Commitments for Capital Expenditure at December 31, 1948 amounted to £10,000.
(Signed) A. PENN } Directors (d)
B. COACH

Freehold ..	20,000	5,000	30,000	1,500	500	28,000
Leasehold ..	10,000	—	10,000	6,000	1,000	3,000
Plant and Machinery ..	10,000	5,000	—	15,000	2,000	7,000
Transport ..	5,000	—	5,000	1,500	500	3,000
Office Equipment ..	2,000	—	1,000	3,000	300	1,700
	£47,000	£10,000	£6,000	£63,000	£16,000	£42,700

II. INVESTMENTS at cost—				Quoted Unquoted	
Trade	..	..	..	£*	£†
Other	..	..	..	5,000	5,000
				1,000	2,000
				6,000	1,000

* Market value at December 31, 1948—£6,250

† Director's valuation—£1,200

‡ The forms in this appendix are not prescribed forms

III. INTERESTS IN SUBSIDIARY COMPANY (not consolidated) (g)—				8,000	
Shares at cost	..	..	..	..	2,000
Debentures at cost ..					10,000

IV. GOODWILL, TRADE MARKS AND PATENTS at cost less amounts written off and as shown by the books of the company				1,000	
---	--	--	--	-------	--

V. CURRENT ASSETS—				4,000	
Stocks on hand at cost as valued by a director ..					15,500
Trade Debts and Payments in Advance less provision for Bad and Doubtful Debts ..					3,500
Advances on Current Account to Subsidiary Company					10,000
Cash and Bank Balances					33,000

VI. LOANS TO EMPLOYEES (h) for purchase of Shares in the company as per the last Balance Sheet ..				500	
---	--	--	--	-----	--

VII. LOANS TO DIRECTORS OR OFFICERS (h) (as approved by the company pursuant to Resolution passed in General Meeting held on July 31, 1948 ..				500	
---	--	--	--	-----	--

VIII. CAPITAL EXPENSES at cost less amounts written off Preliminary Expenses				5,000	
Less : Amount written off against Share Premium Account per contra					5,000

	£94,700					£94,700
--	---------	--	--	--	--	---------

AUDITORS REPORT TO THE MEMBERS OF BLANK LIMITED (i)
(For Form of Auditor's Report see Form No. 6, post).

IN these notes all references are to the Companies Act, 1948. (a) S. 149 and Eighth Sched. (b) S. 58, the Eighth Sched., Part I, para. 2 (a). (c) S. 56. (d) S. 155. (e) See the Eighth Sched., Part I, para 11 (ii). (f) As to the method of stating fixed assets in the balance sheet, see Eighth Sched., Part I, paras. 4 and 5. In some cases, these may be stated (as to beginning figures only) at book value at 1st July, 1948. (g) Further information will be required to be attached, see the Eighth Sched., Part II, para. 15 (4). (h) S. 197. (i) As to persons qualified to act as auditors, see Section 161.

2. BLANK COMPANY LIMITED
PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED DECEMBER 31st, 1948 (a)

Corresponding figures for previous year (b)	£	£	Corresponding figures for previous year	£	£
To DIRECTORS' EMOLUMENTS (c)	..	..	By PROFIT FOR THE FINANCIAL YEAR AS ABOVE BEFORE CHARGING THE EXPENSE CONTRA OR THE RECEIPTS AS BELOW	..	..
DIRECTORS' PENSIONS (c)	..	..	INCOME FROM INVESTMENTS (Gross)—	..	..
COMPENSATION TO DIRECTORS FOR LOSS OF OFFICE (c)	..	..	Dividends from Subsidiary Company	..	1,600
AUDITORS' FEE FIXED BY DIRECTORS (d)	..	..	Dividends from Trade Investments	..	200
DEBENTURE INTEREST (Net)	..	..	Other Dividends and Interest	..	200
FIXED LOAN INTEREST (Net)	..	..	(Tax deducted £1,060)	..	2,000
DEPRECIATION AND AMOUNTS WRITTEN OFF—	..	..	INCOME OF A NON-RECURRENT NATURE—	..	..
Freehold Property	..	500	Profit on sale of fixed assets	..	1,000
Leasehold Property	..	1,000	Provision for deferred repairs in prior years in excess of requirements now brought in	..	1,000
Plant and Machinery	..	2,000			
Transport	..	500			
Office Equipment	..	300			
		4,300			
CAPITAL REDEMPTION RESERVE FUND—					
Amount transferred pursuant to resolution passed in General Meeting in 1947—annual amount set aside out of profits to redeem 8% Redeemable Preference Shares at par	..	..	
PROVISIONS—		5,000			
Transfer to Property Repair Account	..	2,000			
Transfer to Contract Contingencies Account	..	3,000			
		5,000			
TAXATION—					
Income Tax Schedule D 1949-50 (subject to agreement)	..	10,800			
Profit Tax on profits for the year	..	2,500			
Schedule A 1948-49 and tax on investment income less tax retained on interest paid during the year	..	1,000			
		14,300			
BALANCE OF PROFIT FOR THE YEAR, carried down..		1,000			
		£37,515			£37,515

To DIVIDENDS PROPOSED AND PAID—			By BALANCE OF PROFIT FOR THE YEAR, brought down ..	1,000
Preference Dividend paid for the year ended December 31, 1948, less tax at 9s. in the £	1,100		BALANCE OF UNDISTRIBUTED PROFIT BROUGHT FORWARD FROM 1947 ..	500
20% Ordinary Dividend proposed for the year ended December 31, 1948, less tax at 9s. in the £	1,100	2,200	RESERVE—amount brought in from Dividend Equalisation Account ..	2,000
BALANCE CARRIED TO BALANCE SHEET, being undistributed profit at the end of the year	..	1,300	Note: The directors of the company received £500 as fees from the company's subsidiary to which Board they were nominated by the company. Renewals of loose tools during the period have been charged to Cost of Production.	
		£3,500		£3,500

NOTES

- (a) Eighth Sched., paras, 12 to 14.
(b) *Ibid.*, para. 14 (5).
(c) S. 196, Eighth Sched., para 12.
(d) As to the contents of the Auditors' report, see S. 162 and the Ninth Sched. The Profit and Loss Account must be annexed to the Balance Sheet (S. 156), and the Auditors' Report (as above) must be attached thereto (S. 156). The Directors' Report must be attached to the Balance Sheet (S. 157).

3. CONSOLIDATED BALANCE SHEET OF ORDINARY (HOLDINGS) LIMITED AND ITS SUBSIDIARY DEPENDENT SERVICES LIMITED WHOSE ACCOUNTS ARE MADE UP TO 30TH NOVEMBER (AS TO WHICH SEE NOTE BELOW AS REGARDS DATES) AT DECEMBER 31st, 1948 (a)

Previous Period (b)	£	£	£	Previous Year	£
			(Adjusted to nearest £)		
I. SHARE CAPITAL AND SURPLUSES OF ORDINARY (HOLDINGS) LIMITED					
Capital—Authorized and Issued:					
70,000 Ordinary Shares of £1 each, fully paid		70,000			
SHARE PREMIUM ACCOUNT as per last Balance Sheet		3,500			
CAPITAL RESERVE—					
Surplus on book values on revaluation of fixed assets in 1946	6,000				
Add: Amount transferred from Profit and Loss Account this period	1,000				
			7,000		
REVENUE RESERVES AND UNDISTRIBUTED PROFITS—					
Dividend Equalisation Account:					
Balance at January 1, 1948	3,000				
Less: Transferred to Profit and Loss Account this period	1,000				
			2,000		
Profit and Loss Account:					
Holding Company	658				
Subsidiary Company	200				
			858		
		83,358			
		3,700			
		4,000			
II. TAXATION RESERVE—					
Income Tax Schedule D 1949-50 (subject to agreement)					
III. SHARE CAPITAL AND SURPLUS OF OUTSIDE SHAREHOLDERS OF SUBSIDIARY COMPANY					
IV. DEBENTURES—					
4% Mortgage—Authorized £10,000: Amount issued and outstanding (secured on certain fixed assets)					
V. 4% LOAN REPAYABLE BY 1950					
VI. CURRENT LIABILITIES—					
Sundry Trade Creditors and Accruing Expenses	25,940				
Interest accrued	110				
Inter-company balances (due to varying balancing dates)	500				
Current Taxation 1948-49 (as agreed)	3,957				
Profit Tax on Profits for the year (subject to agreement)	1,400				
		31,907			
VII. PROVISIONS—					
Contract Contingencies:					
Amount set aside from profits this period		1,000			
Deferred Repairs:					
Balance at January 1, 1948	500				
Less: Amount transferred to Profit and Loss Account being no longer required	500				
		—			
VIII. DIVIDENDS PROPOSED FOR PAYMENT (net)—					
Holding Company	3,850				
Outside Shareholders of Subsidiary Company	135				
		3,985			

Notes : The consolidation does not include the case of a sub-subsidiary company of which no accounts are yet available due to that company having been incorporated on December 1, 1948.

Certain currency assets of the holding company have been converted into sterling at Bank of England official rates. There are contingent liabilities of £2,000 in respect of investments not fully paid. The financial year of the subsidiary company does not coincide with the holding company, as if it did, the preparation of consolidated accounts would be delayed (c).

(Signed) U. E. STIRLING } Directors (d).
E. C. RICH }

£
£

APPENDIX II

I. FIXED ASSETS (b) at cost or valuation, including additions, less sales at cost subsequent to valuation and amounts written off—	£
FREEHOLD PROPERTY—	
Holding Company at valuation in 1946	20,000
At cost not included in valuation	5,000
	25,000
Purchases less Sales subsequent to valuation at cost, in previous periods:	
Holding Company	18,000
Subsidiary Company	7,000
	25,000
Additions less sales at cost this period:	
Holding Company	2,000
Subsidiary Company	3,000
	5,000
AGGREGATE COST OR VALUATION	55,000
Less: Amounts written off (f)—	
Holding Company	3,000
Subsidiary	1,000
	4,000
	4,750
	50,250

PLANT AND MACHINERY, TRANSPORT AND OFFICE EQUIPMENT—

At Cost	Less Depreciation	Previous This periods period (f)
Plant and Machinery	£	£
Transport	25,000	8,000
Office equipment	5,000	1,000
	4,000	600
	£34,000	£9,600
		£3,700
		14,500
		3,000
		3,200

II. Goodwill at cost, being premium paid by holding company on acquisition of shares in subsidiary company

5,000

III. INTEREST IN SUB-SUBSIDIARY COMPANY—Shares at cost

5,000

(No accounts have yet been prepared by this company which was incorporated on December 1, 1948).

IV. INVESTMENTS at cost—

Quoted Unquoted

Trade—Holding Company

£

5,000

Subsidiary Company

£

5,000

Other—Holding Company

£

10,000

£20,000

£1,000

* Market value at December 31, 1948—£20,250

† Directors' valuation—£1,100

V. CURRENT ASSETS—

Holding Sub-
Company sidary
Company

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REPORT OF THE AUDITORS TO THE MEMBERS OF MESSRS. ORDINARY (HOLDINGS) LIMITED (g)

(For Auditor's Report see Form No. 5, post)

NOTES

(a) Sa. 149 to 152 Eighth Sched., Parts I and II. (b) Eighth Sched., para. 14 (5). (c) Ibid, para. 22. (d) S. 155. (e) S. 197. (f) The aggregate depreciation may be shown as one item. (g) See the Ninth Schedule. As to the persons qualified to act as auditors, see Section 161).

* The forms in this Appendix are not prescribed forms.

4. CONSOLIDATED PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED DECEMBER 31st, 1948, OF ORDINARY (HOLDINGS) LIMITED AND ITS SUBSIDIARY DEPENDENT SERVICES LIMITED (a)

(Adjusted to the nearest £)

Previous Period	£	£	Previous Year (b)	£	£
To AUDITORS' FEES AND EXPENSES (c) .. .. .	..	..	750	..	..
DEBENTURE INTEREST (net) .. .. .	..	..	66	..	..
LOAN INTEREST (net) .. .. .	..	..	44	..	..
DEPRECIATION AND AMOUNTS WRITTEN OFF—	..	..	..	..	..
Freehold Properties .. .. .	..	750	..	..	..
Plant and Machinery .. .. .	..	2,500	..	..	..
Transport .. .. .	..	1,000	..	..	..
Office Equipment .. .. .	..	200	..	..	..
BRITISH TAXATION—	..	..	..	..	..
Schedule D 1949-50 (subject to agreement)	..	3,700	4,450	..	630
Profit Tax on profits for the year .. .. .	..	1,400	..	..	500
Schedule A 1948-49 and tax on investment income less tax retained on interest paid during the year	..	780	..	..	1,000
RESERVES—Amount transferred to Capital Reserve account .. .. .	..	5,880	..	..	..
PROVISIONS—Amount transferred to Contracts Contingencies Account .. .. .	..	1,000	..	..	..
BALANCE BEING CONSOLIDATED INCOME FOR THE YEAR—	..	1,000	..	..	..
Belonging to Minority Shareholders of Subsidiary Company .. .. .	..	500	..	..	..
Belonging to Group .. .. .	..	1,743	2,243	..	..
£	£15,433	£15,433	£	£15,433	£15,433
To DIVIDENDS Proposed (net)—	..	..	..	..	..
10% Ordinary Dividend for the year ended December 31, 1948 less tax at 9s. in the £ .. .. .	..	3,850	..	..	1,743
10% Ordinary Dividend provided for minority interests in subsidiary company, less tax at 9s. in the £ (in respect of the subsidiary year ended November 30, 1948) .. .. .	..	135	..	..	500
BALANCE BEING UNDISTRIBUTED, PROFITS CARRIED FORWARD TO NEXT YEAR—	..	..	..	..	..
Group Interest (£200 is retained in the accounts of the subsidiary company) .. .. .	..	858	..	..	2,243
Minority Interest .. .. .	..	400	..	..	2,000
£	£5,243	£5,243	£	£5,243	£5,243

By BALANCE OF CONSOLIDATED INCOME FOR THE YEAR, brought down—
 Belonging to Group 1,743
 Belonging to Minority Interests 500

BALANCE BROUGHT FORWARD FROM 1947
 RESERVES—Amount transferred from Dividend Equalisation Account 1,000

(c) If fixed by directors.

(b) Ibid. Part I, para. 14 (5).

(a) Eighth Sched., Part III.

NOTES

5. SUGGESTED FORM OF AUDITORS' REPORT IN THE CASE OF A HOLDING COMPANY (a) SUBMITTING GROUP ACCOUNTS (b) TO COMPLY WITH SECTION 162 (c) OF THE COMPANIES ACT, 1948 AND THE NINTH SCHEDULE THERETO (d).

**AUDITORS' REPORT TO THE MEMBERS (e) OF
MESSRS. COMPANY, LIMITED.**

We have examined the above Consolidated Balance Sheet together with the annexed Consolidated Profit and Loss Account (f), dated 19.... of Messrs. Company, Limited (of whom we are the auditors) [or, as audited by Messrs.] and with the accounts of its subsidiary companies made up in each case to a date within the aforesaid year as audited by Messrs. [or, in the case of subsidiaries by Messrs. and as to the remainder by Messrs. (or, as the case may be)]. [Add, if applicable. The audited accounts and returns signed by (here indicate the status of the signatories) respecting Messrs. Company, Limited, interests abroad (or, branches as the case may be) have been incorporated herein.]

In our opinion, the Group Accounts have been properly prepared in accordance with the provisions of the Companies Act, 1948, so as to give a true and fair view of the state of affairs and profit or loss of Messrs. Company, Limited] and its subsidiaries dealt with thereby, so far as concern the members of the company [or, so as to give a true and fair view thereof, subject to the non-disclosure of certain provisions which have been made in connection with anticipated losses on foreign interests which the directors consider essential. This action has been approved by the Board of Trade and by virtue of Part III of the Eighth Schedule to the Companies Act, 1948, is not required to be disclosed (or, as the case may be)].

Signed.....

Date..... 19..

Auditors (g)

NOTES

(a) **Holding company.**—For the meaning of holding company, see generally the notes to section 154, *ante*.

(b) **Group accounts.**—See generally the notes to section 150, *ante*.

(c) **Section 162.**—See notes to Form No. 6, *post*.

(d) **Ninth Schedule.**—See the notes thereto, *ante*.

(e) **Members.**—See notes to section 26, *ante*.

(f) **Consolidated balance sheet . . . consolidated profit and loss account.**—See generally section 151, *ante*.

(g) As to persons qualified to act as auditors, see section 161, *ante*.

N.B.—In other respects, the position is analogous to that of the report in the case of a company which is not a holding company, as to which, see the notes to Form No. 6 (Auditors' Report), *post*.

6. SUGGESTED FORM OF AUDITORS' REPORT TO COMPLY WITH SECTION 162 (a) OF THE COMPANIES ACT, 1948, AND THE NINTH SCHEDULE THERETO.

**AUDITORS' REPORT TO THE MEMBERS OF
MESSRS. COMPANY, LIMITED.**

We have examined the above Balance Sheet (b) together with the annexed Profit and Loss Account (b). We have obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of the audit (c). In our opinion, proper books of account (d) have been kept, so far as appears from our examination thereof [or, the books of account are deficient in that (specifying the deficiencies with particulars) or as the case may be] [add, if applicable, and proper returns (e) adequate for the purpose of our audit have been received] [or have not been received from the branches not visited by us (add, if not adequate in that (specifying the deficiencies with particulars))]. The company's Balance Sheet and Profit and Loss Account dealt with by our report are in agreement with the books of account and returns (or, as the case may be).

In our opinion and to the best of our information and according to the explanations given us, the Balance Sheet and Profit and Loss Account give the information required by the Companies Acts, 1948, in the manner required and

give a true and fair view (f) of the state of affairs as at 19.. (g) and of the Profit and Loss Account for the period from 19.. to 19.. (g) [subject to the non-disclosure of certain provisions which have been made in connection with anticipated losses on the company's foreign interests which the directors consider essential. This action has been approved by the Board of Trade and by virtue of Part III (h) of the Eighth Schedule to the Companies Act, 1948, is not required to be disclosed (or, as the case may be)].

Signed.....

Date.....19..

Auditors (k)

NOTES

(a) **Auditors' report to comply with section 162.**—As to the duties of companies' auditors under this Act, see generally the notes to section 162, *ante*. See also *ibid.*, as to their rights. As to persons qualified for appointment as auditor of a company, see section 161, *ante*, and generally the notes thereto. For the position as to the appointment and remuneration of auditors, see generally the notes to section 160, *ante*.

(b) **Balance sheet . . . profit and loss account.**—See the notes to section 149, *ante*.

(c) **Purposes of the audit.**—Generally, an audit in the context here used means an investigation into the books of account, returns, supporting documents and other evidence on which such records are based so as to enable the auditor to report to those to whom he has a statutory duty so to do under the provisions of this Act. See also the notes to the Ninth Schedule, *ante*.

(d) **Books of account.**—See generally the notes to section 147, *ante*.

(e) **Returns.**—See section 147, *ante*.

(f) **True and fair view.**—See section 149, *ante*.

(g) **State of affairs as at . . . 19 . . . and . . . profit and loss account for the period from . . . to . . .**—I e., in the case of the balance sheet "as at the end of its financial year", and in the case of the profit and loss account "of the profit or loss for its financial year". (See the Ninth Schedule, paragraph 3 (2), *ante*.)

(h) **Part III of the Eighth Schedule.**—Certain classes of companies are exempt from the requirements of Part I of that Schedule in certain respects (see further as to this the notes generally to Part III of the Eighth Schedule, *ante*).

(k) As to the persons qualified to act as auditors, see section 161, *ante*.

APPENDIX III

REGISTRATION OF BUSINESS NAMES ACT, 1916

(6 & 7 Geo. 5. Ch. 58)

ARRANGEMENT OF SECTIONS

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SCHEDULE	483

An Act to provide for the Registration of Firms and Persons carrying on Business under Business Names and for purposes connected therewith.

[22nd December 1916]

1. Firms and persons to be registered.—Subject to the provisions of this Act—

- (a) Every firm having a place of business in the United Kingdom and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names ;
- (b) Every individual having a place of business in the United Kingdom and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof ;
- (c) Every individual or firm having a place of business in the United Kingdom, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage ;
- [(d) Every company as defined in the Companies Act, 1929, carrying on business under a business name which does not consist of its corporate name without any addition ;]

shall be registered in the manner directed by this Act :

Provided that—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary ; and
- (ii) where two or more individual partners have the same surname, the addition of an s at the end of that surname shall not of itself render registration necessary ; and
- (iii) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary ; and
- (iv) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

NOTE.—The words in brackets under paragraph (d), *supra*, were added by section 58 (1) of the Companies Act, 1947, *ante*, which section was brought into force on December 1, 1947, by the Companies Act (Commencement) Order, 1947, S.R. & O. 1947 No. 2503.

2. Registration by nominee, &c.—Where a firm, individual, or corporation having a place of business within the United Kingdom carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons; or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the schedule to this Act :

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.

3. Manner and particulars of registration.—(1) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the firm or person is situated a statement in writing in the prescribed form containing the following particulars :—

- (a) The business name ;
- (b) The general nature of the business ;
- (c) The principal place of the business ;

- (d) Where the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or surname, the nationality, [*and if that nationality is not the nationality of origin, the nationality of origin,*] the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner ;
 - (e) Where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the nationality, [*and if that nationality is not the nationality of origin, the nationality of origin,*] the usual residence, and the other business occupation (if any) of such individual ;
 - (f) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office ;
 - (g) If the business is commenced after the passing of this Act, the date of the commencement of the business.
- (2) Where a business is carried on under two or more business names, each of those business names must be stated.

NOTE.—In the case of a company carrying on business under a business name which does not consist of its corporate name without any addition, the reference to the passing of the Act must be read as a reference to the coming into force of section 58 of the Companies Act, 1947 (viz., December 1, 1947) (*ibid.*, section 58 (2)). The words in italics were repealed by the Companies Act, 1947, s. 123 (3) and Ninth Schedule, Part II ; cf. section 116 of that Act, *ante*.

4. Statement to be signed by persons registering.—The statement required for the purpose of registration must in the case of an individual be signed by him, and in the case of a corporation by a director or secretary thereof, and in the case of a firm either by all the individuals who are partners, and by a director or the secretary of all corporations which are partners or by some individual who is a partner, or a director or the secretary of some corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory : Provided that no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for or against any such other person in respect of his liability or non-liability as a partner, and that the High Court or a judge thereof may on application of any person alleged or claiming to be a partner direct the rectification of the register and decide any question arising under this section.

5. Time for registration.—The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be : Provided that if such firm or person has carried on such business before the passing of this Act or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the passing of this Act, and that if at the expiration of the said two months the conditions affecting the firm or persons have ceased to be such as to require registration under this Act, the firm or person need not be registered so long as such conditions continue.

This section shall apply, in the case where registration is required in consequence of a change of name, as if for references to the date of the commencement of the business there were substituted references to the date of such change.

6. Registration of changes in firm.—Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person such firm or person shall, within fourteen days after such change, or such longer period as the Board of Trade may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or delivery to the registrar in that part of the United Kingdom in which the aforesaid particulars are registered a statement in writing in the prescribed form specifying the nature and date of the change signed, and where necessary verified, in like manner as the statement required on registration.

7. Penalty for default in registration.—If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the registrar within such time as may be specified in the order.

NOTE.—As to liability where registration is refused, see now Companies Act, 1947, section 116 (2).

8. Disability of persons in default.—(1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise :

Provided always as follows :—

- (a) The defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract ;
- (b) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid ;
- (c) If any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim set off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this section the expression “ court ” means the “ High Court ” or a judge thereof :

Provided that, without prejudice to the power of the High Court or a judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a county court, the county court may, as respects that contract, grant such relief as aforesaid.

9. Penalty for false statements.—If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall, on summary conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

10. Duty to furnish particulars to Board of Trade.—(1) The Board of Trade may require any person to furnish to the Board such particulars as appear necessary to the Board for the purpose of ascertaining whether or not he or the firm of which he is partner should be registered under this Act, or an alteration made in the registered particulars, and may also in the case of a corporation require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars, and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall on summary conviction be

liable to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding twenty pounds or to both such imprisonment and fine.

(2) If from any information so furnished it appears to the Board of Trade that any firm or person ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Board may require the firm or person to furnish to the registrar the required particulars within such time as may be allowed by the Board, but, where any default under this Act has been discovered from the information acquired under this section, no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Board under this section to furnish particulars to the registrar.

11. Registrar to file statement and issue certificate of registration.

—On receiving any statement or statutory declaration made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not so exhibited, every partner in the firm or the person, as the case may be, shall be liable on summary conviction to a fine not exceeding twenty pounds.

NOTE.—As to the position where the firm or individual no longer requires to be registered, see now Companies Act, 1947, section 116 (5), *ante*.

12. Index to be kept.—At each of the register offices herein-after referred to the registrar shall keep an index of all the firms and persons registered at that office under this Act.

13. Removal of names from register.—(1) If any firm or individual registered under this Act ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or of the individual or if he is dead his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the registrar notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

(2) On receipt of such a notice as aforesaid the registrar may remove the firm or individual from the register.

(3) Where the registrar has reasonable cause to believe that any firm or individual registered under this Act is not carrying on business he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual may be removed from the register.

(4) If the registrar either receives an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within one month after sending the notice receive an answer, he may remove the firm or individual from the register.

NOTE.—As to the application of this section to a company, see the Companies Act, 1947, section 58 (3), *ante*.

14. Misleading business names.—(1) Where any business name under which the business of a firm or individual is carried on contains the word "British" or any other word which, in the opinion of the registrar, is calculated to lead to the belief that the business is under British ownership or control, and the registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, the registrar shall refuse to register such business name or, as the case may be, remove such business name from the register, but any person aggrieved by a decision of the registrar under this provision may appeal to the Board of Trade, whose decision shall be final.

(2) The registration of a business name under this Act shall not be construed as authorising the use of that name if apart from such registration the use thereof could be prohibited.

NOTE.—The power of the registrar under this section is extended, by the Companies Act, 1947, section 116 (1), *ante*, without prejudice to the provisions of section 14, *supra*, to any name which is in his opinion undesirable.

15. Registrar.—There shall be offices in London, Edinburgh, and Dublin for the registration of firms and persons whose principal places of business are respectively situated in England and Wales, Scotland, and Ireland, and the registrar of companies in each of those cities or such other person as the Board of Trade may determine shall be the registrar for the purposes of this Act.

16. Inspection of statements registered.— . . . any person may inspect the documents filed by the registrar on payment of such fees as may be prescribed not exceeding one shilling for each inspection; and any person may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement to be certified by the registrar or assistant registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as may be prescribed not exceeding two shillings for the certificate of registration, and not exceeding [one shilling for any other] entry, copy, or extract.

A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy or extract under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar), shall, in all legal proceedings, civil or criminal, be received in evidence.

NOTE.—The words between square brackets were substituted by the Fees (Increase) Act, 1923, s. 5 (2); 19 Halsbury's Statutes 896. The words omitted were repealed by the Statute Law Revision Act, 1927; 18 Halsbury's Statutes 1211.

17. Power for Board of Trade to make rules.—(1) The Board of Trade may make rules (but as to fees with the concurrence of the Treasury) concerning any of the following matters:—

- (a) The fees to be paid to the registrar under this Act, so that they do not exceed the sum of [one pound] for the registration of any one statement;
- (b) The forms to be used under this Act;
- (c) The duties to be performed by any registrar under this Act;
- (d) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;
- (e) Generally the conduct and regulation of registration under this Act, and any matters incidental thereto.

(2) All fees payable in pursuance of any such rules shall be applied as the Treasury may direct.

NOTE.—One pound was substituted for five shillings as the maximum fee by the Fees (Increase) Act, 1923, s. 5 (3); 19 Halsbury's Statutes 896.

18. Publication of true names, &c.—(1) . . . every individual and firm required by this Act to be registered shall, in all trade catalogues, trade circulars, showcards, and business letters, on or in which the business name appears and which are issued or sent by the individual or firm to any person in any part of His Majesty's dominions, have mentioned in legible characters—

- (a) in the case of an individual, his present Christian name or the initials thereof and present surname, any former Christian name or surname, his nationality if not British, [*and if his nationality is not his nationality of origin his nationality of origin*]; and
- (b) in the case of a firm, the present Christian names, or the initials thereof and present surnames, any former Christian names and surnames, and the nationality if not British, [*and if the nationality is not the nationality of origin the nationality of origin*] of all the partners in the firm or, in the case of a corporation being a partner, the corporate name.

(2) If default is made in compliance with this section the individual or, as the case may be, every member of the firm shall be liable on summary conviction for each offence to a fine not exceeding five pounds:

Provided that no proceedings shall in England or Ireland be instituted under this section except by or with the consent of the Board of Trade.

NOTE.—The words omitted from subsection (1) were repealed by the Statute Law Revision Act, 1927; 18 Halsbury's Statutes 1211. The words in italics were repealed by the Companies Act, 1947, s. 123 (3) and Ninth Schedule, Part II; cf. section 116, of that Act, *ante*.

19. Offences by corporations.—Where a corporation is guilty of an offence under this Act every director, secretary, and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

20. Mode of action by the Board of Trade.—Anything required or authorised by this Act to be done by the Board of Trade may be done by the President or a Secretary or Assistant Secretary of the Board, or any other person authorised in that behalf by the President of the Board.

21. Remuneration for duties under this Act.—There shall be paid out of moneys to be provided by Parliament such remuneration in respect of the duties performed under this Act as the Treasury may assign.

22. Interpretation of terms.—In the construction of this Act the following words and expressions shall have the meanings in this section assigned to them, unless there be something in the subject or context repugnant to such construction :—

“ Firm ” shall mean an unincorporate body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit, but shall not include any unincorporated company which was in existence on the second day of November eighteen hundred and sixty-two :

“ Business ” shall include profession :

“ Individual ” shall mean a natural person and shall not include a corporation :

“ Christian name ” shall include any forename :

“ Initials ” shall include any recognised abbreviation of a Christian name :

In the case of a peer or person usually known by a British title different from his surname, the title by which he is known shall be substituted in this Act for his surname :

References in this Act to a former Christian name or surname [*shall not, in the case of natural-born British subjects, include a former Christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years, and*], in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage :

References in this Act to a change of name shall not include, [*in the case of natural-born British subjects, a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years ; or,*] in the case of a peer or a person usually known by a British title different from his surname, the adoption of or succession to the title :

“ Business name ” shall mean the name or style under which any business is carried on, whether in partnership or otherwise :

“ Foreign firm ” shall mean any firm, individual, or corporation whose principal place of business is situate outside His Majesty's dominions :

“ Showcards ” shall mean cards containing or exhibiting articles dealt with, or samples or representations thereof :

“ Prescribed ” shall mean prescribed by rules made in pursuance of this Act.

NOTE.—The words in italics were repealed by the Companies Act, 1947, s. 123 (3) and Ninth Schedule, Part II ; cf. section 116, of that Act, *ante*.

23. Application to Scotland.—(1) In the application of this Act to Scotland—

“ Court of Session ” shall be substituted for “ High Court ” ;

“ Sheriff court ” shall be substituted for “ county court ” ;

“ Trustee on a sequestrated estate ” shall be substituted for “ trustee in bankruptcy ” ;

“ Receiver or manager appointed by any court ” shall include “ judicial factor ” ; and

“ Joint tenants ” and “ tenants in common ” shall mean *pro indiviso* proprietors.

24. Application to Ireland.—In the application of this Act to Ireland the expression “trustee in bankruptcy” shall be construed as including an assignee in bankruptcy and a trustee of the estate of an arranging debtor.

25. Short title.—This Act may be cited as the Registration of Business Names Act, 1916.

SCHEDULE

Section 2.

Description of Firm, &c.	The additional Particulars
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee.	The present Christian name and surname, any former name, nationality, [<i>and, if that nationality is not the nationality of origin, the nationality of origin,</i>] and usual residence, or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on: Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on: Provided that if the business is carried on as agent for three or more foreign firms it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

Note.—The words in italics were repealed by the Companies Act, 1947, s. 123 (3) and Ninth Schedule, Part II; cf. section 116, of that Act, *ante*.

THE BUSINESS NAMES RULES, 1917

(S.R. & O. 1917 No. 186)

1. These Rules may be cited as the Business Names Rules, 1917, and shall come into operation from and immediately after the 15th February, 1917.

2. The Act means the Registration of Business Names Act, 1916.

[3. Whenever any act is by the Act required to be done by the Registrar, such act shall be done by the Registrar or by an Assistant Registrar or by any Acting Assistant Registrar or by any officer authorised in that behalf by the Board of Trade.]

NOTE.—This rule was substituted by the Business Names Rules, 1939, S.R. & O. 1939 No. 864.

NOTE.—The offices of the Board of Trade are at Millbank, London, S.W.1.

Procedure under Section 14

4. Where the Registrar, pursuant to Section 14 (1) of the Act, decides to refuse to register any business name or as the case may be, to remove any business name from the register, he shall send by post to the firm or individual applying for registration or as the case may be, registered in respect of such business name, a notice in writing of such decision and such notice shall contain a statement that any person aggrieved by such decision may appeal to the Board of Trade within twenty-one days of such notice.

5. If within twenty-one days from the date of the notice of a decision of the Registrar under Section 14 (1) of the Act to remove a business name from the register, no notice of appeal from such decision is received by the Registrar, or if on appeal such decision of the Registrar is upheld, the Registrar shall remove such business name from the register in accordance with his decision.

Appeals to the Board of Trade

6. Any person intending to appeal to the Board of Trade from any decision of the Registrar under Section 14 (1) shall, within twenty-one days of the

date of the notice of such decision, send by post or deliver to the Registrar from whose decision he intends to appeal a notice of appeal in Form R.B.N. 6.

Such notice shall be accompanied by a statement of the grounds of appeal and of the appellant's case in support thereof.

7. A copy of the notice of appeal, together with a copy of the statement of the grounds of appeal and of the case in support thereof, and a copy of the notice of the Registrar's notice shall at the same time be delivered by the Appellant to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London.

NOTE.—The offices of the Board of Trade are at Millbank, London, S.W.1.

8. Upon receipt of such documents the Board of Trade shall, if the Appellant states in his notice of appeal that he desires to be heard by them, fix a time and date for such hearing at which the Appellant and the Registrar may attend and be heard. If the Appellant does not attend or is not represented on and during the hearing he may be treated as not desiring to be heard and the Board of Trade may proceed to adjudicate on the matter. The hearing may be postponed or adjourned by the Board of Trade.

9. The decision of the Board of Trade shall be communicated to the Appellant in writing.

10. The time prescribed in these Rules for doing any act thereunder by or to the Registrar, or by or to the Board of Trade may be enlarged by the Board of Trade upon such terms as they may direct, and such enlargement may be granted though the time has expired for doing such an act.

Fees

11. The Fees to be paid to the Registrar under the Act are to be as follows :—

- (a) On a Statement of Particulars required by Section 3 of the Act the sum of five shillings, and such fee shall cover the issue of one certificate of registration.
- (b) On any Statement of Particulars required by the Schedule to the Act when such particulars are not furnished with the Statement of Particulars required by Section 3 of the Act the sum of five shillings, and such fee shall cover the issue of one certificate of registration.
- (c) On a statement of any change within the meaning of Section 6 of the Act the sum of five shillings, and such fee shall cover the issue of one certificate of registration of such statement.
- (d) By any person inspecting under the provisions of Section 16 of the Act the documents filed by the Registrar, the sum of one shilling for each inspection.
- (e) On the application of any person requiring under the provisions of Section 16 of the Act a certificate of registration of any firm, individual or corporation or a certified copy of or extract from any registered statement the sum of two shillings for a certificate of registration, and for any other entry, copy or extract the sum of one shilling.
- (f) By any person appealing to the Board of Trade from a decision of the Registrar the sum of one pound.

NOTE.—This rule was substituted for r. 11 of the 1917 Rules by the Business Names Rules, 1926 (S.R. & O. 1926 No. 521).

12. (*This rule prescribed the forms to be used under the Act : all these forms were superseded by those prescribed by the Business Names Rules, 1938, S.R. & O. 1938 No. 103, which themselves have been superseded by forms prescribed by the Business Names Rules, 1948, S.I. 1948 No. 678.*)

THE BUSINESS NAMES RULES, 1948

(S.I. 1948 No. 678)

Made 5th April, 1948

Coming into Operation 12th April, 1948

The Board of Trade in pursuance of the powers conferred upon them by Section 17 of the Registration of Business Names Act, 1916 (hereinafter called "the Act"), as amended by the Companies Act, 1947, and of all other powers in that behalf enabling them hereby order as follows :—

1. The forms marked R.B.N.1, R.B.N.1A, R.B.N.1B, R.B.N.1c, R.B.N.2, R.B.N.2A, R.B.N.3, R.B.N.3A, R.B.N.3B, R.B.N.4, R.B.N.6, R.B.N.7, R.B.N.7A, R.B.N.8, R.B.N.8A, R.B.N. S.D., and R.B.N. Cert. 2 in the

Appendix hereto with such variations as the circumstances in each case require shall be the forms to be used under the Act and shall be substituted for the forms referred to in Rule 12 of the Business Names Rules, 1917, as amended, and set out in the Appendix to those Rules.

NOTE.—Of the forms mentioned above only those marked R.B.N.1B, 1c, 2A 3B, 4, 6, 7, 7A, 8, 8A, and R.B.N. S.D. and R.B.N. Cert. 2 are printed here.

2. The Rules may be cited as the Business Names Rules, 1948, and shall come into operation on the 12th day of April, 1948.

APPENDIX
FORM R.B.N. 1B

A 5s. adhesive postage stamp must be affixed in the space provided.

The statement must be sent or delivered in—

England and Wales to the Registrar of Business Names,
Bush House, South West Wing, Strand, London,
W.C.2;

Scotland to the Registrar of Business Names, Exchequer
Chambers, Parliament Square, Edinburgh.

5s. Postage
stamp to be
affixed here

Form R.B.N.1B

Registration of Business Names Act, 1916,
as amended by the Companies Act, 1947

No. of Certificate

APPLICATION FOR REGISTRATION BY A COMPANY as defined in the Companies Act, 1929 (see Section 58 of the Companies Act, 1947).

In furnishing the particulars specified below the word "none" or "same" as the case may be MUST be entered where applicable.

....., hereby apply for registration pursuant to the provisions of the Registration of Business Names Act, 1916, as amended, and for that purpose furnish the following statement of particulars:—

1. The business name.

See Note A at back.
(printed below)

2. The general nature of the business.

3. Name of the company carrying on the business.

4. Registered office of the company.

5. Principal place of business. (Full address.)

6. Date of commencement of the business by the company if the business was commenced after 1st December, 1947.

7. Any other business name or names under which the business is carried on. If none say "None."

Dated this.....day of.....19 ..

(Signature).....

SEE NOTE "B" ON BACK [printed below]

NOTE A.—The Registrar of Business Names has the power to refuse to register any name which in his opinion is undesirable (see Section 14 of the Act as amended by the Companies Act, 1947).

NOTE B.—This statement must in all cases be signed by a director or the secretary of the company applying for registration, and must be sent by post or delivered to the Registrar within fourteen days of commencing to carry on business.

If the principal place of business is situated in :—

- (a) England or Wales, the statement must be sent or delivered to the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2 ;
- (b) Scotland, the statement must be sent or delivered to the Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

Failure, without reasonable excuse, to furnish the required statement of particulars within the time specified will, in addition to any disability imposed by the Act, entail liability on conviction to a fine not exceeding £5 for every day during which the default continues ; any statement which contains any matter which is false in any material particular to the knowledge of any person signing it will entail liability on conviction to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding £20, or to both such imprisonment and fine.

Where the company applying for registration carried on the business wholly or mainly as nominee or trustee of or for another person or other persons or a corporation, or acts as general agent for any foreign firm, the additional particulars specified in the Form R.B.N. 2A must also be furnished on such Form and sent by post or delivered to the Registrar in manner and within the time before specified.

FORM R.B.N. 1C

A 5s. adhesive postage stamp must be affixed in the space provided.

The statement must be sent or delivered in—

England and Wales to the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2 ;

Scotland to the Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

5s. Postage

stamp to be

affixed here

Form R.B.N. 1C

Registration of Business Names Act, 1916,

as amended by the Companies Act, 1947

No. of Certificate

APPLICATION FOR REGISTRATION BY A CORPORATION, other than a company as defined in the Companies Act, 1929, having a place of business within the United Kingdom and carrying on the business wholly or mainly as nominee or trustee of or for another person or other persons or another corporation or acting as general agent for any foreign firm.

In furnishing the particulars specified below and overleaf the word " none " or " same " as the case may be MUST be entered where applicable.

.....,* hereby applies for registration under the provisions of the Registration of Business Names Act, 1916, as amended, and for that purpose furnishes the following statement of particulars :—

* Insert name of corporation.

1. The business name.	See Note A at back
2. The general nature of the business.	
3. The principal place of the business. (Full address.)	
4. The date of the commencement of the business by the corporation, if the business was commenced after 22nd December, 1916.	
5. The other name or names (if any) under which the business is carried on. If none say " None."	
6. The corporate name of the corporation applying for registration.	
7. The registered or principal office of the corporation applying for registration.	

The following statement* of additional particulars (8), (9), (10), (11) and (12) is to be furnished in respect of the carrying on by such corporation of the business wholly or mainly as nominee or trustee of or for another person or other persons or another corporation, provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, then the particulars required under (12) only need be furnished and the words "not applicable" entered against (8), (9), (10) and (11).

	1	2	3	4	5	6	7
See Note C at back. 8.—The present Christian name or names and surname or the corporate name of every person or corporation on whose behalf the business is carried on.							
See Note D at back. 9.—Any former name or names of any person on whose behalf the business is carried on. If none say "None."							
10.—The nationality of every person on whose behalf the business is carried on.							
11.—The usual residence of every person on whose behalf the business is carried on. (Full address.)							
12.—Description of the class of beneficiaries.							

* If not applicable say "Not applicable."

The further following statement* of additional particulars is to be furnished in respect of any corporation having a place of business within the United Kingdom and acting as general agent for any foreign firm.†

--	--	--

13.—The business name and address of the foreign firm as agent for whom the business is carried on.

If the business is carried on as agent for three or more foreign firms it is sufficient to state the fact that the business is so carried on, specifying countries in which such foreign firms carry on business.

* If not applicable say "Not applicable."

† "Foreign firm" means any firm, individual or corporation, whose principal place of business is situate outside His Majesty's Dominions.

Signature.....

For instructions as to signing, &c., see Note B overleaf.

Dated the.....day of....., 19....

NOTE A.—The Registrar of Business Names has the power to refuse to register any name which in his opinion is undesirable (see Section 14 of the Act as amended by the Companies Act, 1947).

NOTE B.—This statement must in all cases be signed by a director or the secretary of the corporation applying for registration and must be sent by post or delivered to the Registrar within fourteen days of commencing to carry on such business.

If the principal place of business is situated in :—

- (a) England or Wales, the statement must be sent or delivered to the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2 ;
- (b) Scotland, the statement must be sent or delivered to the Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

Failure, without reasonable excuse, to furnish the required statement of particulars within the time specified will, in addition to any disability imposed by the Act, entail liability on conviction to a fine not exceeding £5 for every day during which the default continues, and where a corporation is guilty of an offence under this Act, every director, secretary and officer of the corporation who is knowingly a party to the default will be guilty of a like offence and liable to a like penalty. Any statement which contains any matter which is false in any material particular to the knowledge of any person signing it will entail liability on conviction to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding £20, or to both such imprisonment and fine.

NOTE C.—Section 22 of the Act provides as follows :—" Christian name shall include any fore-name " ; " In the case of a peer or a person usually known by a British title different from his surname the title by which he is known shall be substituted in this Act for his surname."

NOTE D.—" Reference in this Act to a former Christian name or surname shall not, in the case of any person, include a former Christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years, and, in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage."

REGISTRATION OF BUSINESS NAMES ACT, 1916. Section 2

" Where a firm, individual or corporation having a place of business within the United Kingdom carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule to this Act :—

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary."

SCHEDULE

Description of Firm, etc.	The additional Particulars
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee.	The present Christian name and surname, any former name, nationality, and usual residence, or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on : Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on : Provided that if the business is carried on as agent for three or more foreign firms, it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

See Note A at back. The Business Name.....

Form—R.B.N. 2A

No. of Certificate.

Registration of Business Names Act, 1916,
as amended by the Companies Act, 1947

STATEMENT OF ADDITIONAL PARTICULARS to be furnished by a Firm or a Company, as defined in the Companies Act, 1929, pursuant to Section 2 of the Act. (For Section see back page.)
In furnishing the particulars specified below, the word "none" or "same" as the case may be MUST be entered where applicable.

I.—Where any firm or a company having a place of business within the United Kingdom carries on the business wholly or mainly as nominee or trustee of or for another person or other persons or a corporation, the particulars required under (1), (2), (3) and (4) must be furnished, provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, then the particulars required under (5) only need be furnished.

	1	2	3	4	5	6	7
See Note C at back.	1.—The present Christian name or names and surname or the corporate name of every person or corporation on whose behalf the business is carried on.						
See Note D at back.	2.—Any former name or names of any person on whose behalf the business is carried on. If none say "None."						
	3.—The nationality of every person on whose behalf the business is carried on.						
	4.—The usual residence of every person on whose behalf the business is carried on. (Full address.)						
	5.—Description of class of beneficiaries.						

II.—Where any firm or company having a place of business within the United Kingdom acts as general agent for any foreign firm* the following particulars must be furnished. If not applicable say "Not applicable."

The business name and address of the foreign firm as agent for whom the business is carried on.	
If the business is carried on as agent for three or more foreign firms it is sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.	
* "Foreign firm" means any firm, individual or corporation, whose principal place of business is situate outside His Majesty's Dominions.	Signatures {
Dated the.....day of....., 19....	

For instructions as to signing, etc., see Note B overleaf.

NOTE A.—The Registrar of Business Names has the power to refuse to register any name which in his opinion is undesirable (see Section 14 of the Act as amended by the Companies Act, 1947).

NOTE B.—This statement must be signed :—

(1) in the case of a firm—

- (a) by all the individuals who are partners and by a director or the secretary of every corporation which is a partner, or
- (b) provided that the statement is verified by a statutory declaration made by the signatory or signatories, by some individual who is a partner or by a director or the secretary of some corporation which is a partner ;

(2) in the case of a company by a director or the secretary.

This statement when signed must in the case of any business before referred to be sent by post or delivered to the Registrar within fourteen days of commencing to carry on such business, and where the signature of the statement is required to be verified by statutory declaration, the statutory declaration must be sent or delivered with the statement.

Where the firm or company is only under liability to furnish some of these additional particulars the rest should be struck out.

If the principal place of business is situated in :—

- (a) England or Wales, the statement must be sent or delivered to the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2 ;
- (b) Scotland, the statement must be sent or delivered to the Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

Failure, without reasonable excuse, to furnish the required statement of particulars within the time specified will, in addition to any disability imposed by the Act, entail liability on conviction to a fine not exceeding £5 for every day during which the default continues ; and any statement which contains any matter which is false in any material particular to the knowledge of any person signing it will entail liability on conviction to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding £20, or to both such imprisonment and fine.

NOTE C.—Section 22 of the Act provides as follows :—“ Christian name shall include any fore-name.” “ In the case of a peer or person usually known by a British title different from his surname, the title by which he is known shall be substituted in this Act for his surname.”

NOTE D.—“ Reference in this Act to a former Christian name or surname shall not in the case of any person include a former Christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years or has been changed or disused for a period of not less than twenty years, and in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage.”

REGISTRATION OF BUSINESS NAMES ACT, 1916. Section 2

“ Where a firm, individual, or corporation having a place of business within the United Kingdom, carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule to this Act :—

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.”

SCHEDULE

Description of Firm, etc.	The additional Particulars
Where the firm, individual, or company required to be registered carries on business as nominee or trustee.	The present Christian name and surname, any former name, nationality, and usual residence, or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on : Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or company required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on : Provided that if the business is carried on as agent for three or more foreign firms, it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

FORM R.B.N. 3B

A 5s. adhesive postage stamp must be affixed in the space provided.

The statement must be sent or delivered in—
 England and Wales to the Registrar of Business Names,
 Bush House, South West Wing, Strand, London,
 W.C.2 ;
 Scotland, to the Registrar of Business Names, Exchequer
 Chambers, Parliament Square, Edinburgh.

5s. Postage
 stamp to be
 affixed here

Form R.B.N. 3B

Registration of Business Names Act, 1916,

as amended by the Companies Act, 1947.

No. of Certificate

STATEMENT, PURSUANT TO SECTION 6 OF THE ABOVE ACT, OF NATURE OF CHANGE IN
 THE PARTICULARS REGISTERED BY A CORPORATION, WHETHER OR NOT A COMPANY
 AS DEFINED IN THE COMPANIES ACT, 1929, AND THE DATE OF CHANGE.

The following is a statement of a change (and of the date of such change) which has
 been made or has occurred in the particulars registered in respect of.....

.....
 Here insert name of corporation.

.....
 Here insert nature and date of change.

.....
 Dated the.....day of.....19..

Signature.....

For instructions as to signing, etc., see Note *

NOTE*.—This statement must be signed by a director or the secretary of the corporation, and when signed must be sent by post or delivered to the Registrar within fourteen days after any change in any of the particulars registered, or within such

longer period as the Board of Trade may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow.

If the principal place of the business is situated in :—

- (a) England or Wales, the statement must be sent or delivered to the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2 ;
- (b) Scotland, the statement must be sent or delivered to the Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

Failure, without reasonable excuse, to furnish the required statement of any change in particulars within the time specified will, in addition to any disability imposed by the Act, entail liability on conviction to a fine not exceeding £5 for every day during which the default continues, and every director, secretary and officer of the corporation who is knowingly party to the default will be liable to a like penalty. Any statement which contains any matter which is false in any material particular to the knowledge of any person signing it will entail liability on conviction to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding £20 or to both such imprisonment and fine.

INSTRUCTIONS

The foregoing statement must be forwarded :—

A.—Whenever any change is made or occurs in the particulars registered under Section 1 of the above Act, i.e., in :—

- (1) The business name.
- (2) The general nature of the business.
- (3) The principal place of the business.
- (4) The other name or names (if any) under which the business is carried on.
- (5) The corporate name of the corporation.
- (6) The registered or principal office of the corporation.

NOTE.—The Registrar of Business Names has the power to refuse to register any name which in his opinion is undesirable (see Section 14 of the Act as amended by the Companies Act, 1947).

B.—Whenever any change is made or occurs in the particulars registered under Section 2 of the above Act (see below), when the corporation acts as nominee or trustee, i.e., in :—

- (7) The present Christian* name or names and surname or the corporate name of every person or corporation on whose behalf the business is carried on, including changes brought about by increase or decrease in the number of persons or corporations for whom the business registered is wholly or mainly carried on.

* Christian name includes any fore-name.

- (8) The nationality of every person on whose behalf the business is carried on.
- (9) The usual residence of every person on whose behalf the business is carried on.
- (10) Description of the class of beneficiaries ; and

C.—Whenever any change is made or occurs in the additional particulars registered under Section 2 of the above Act (see below) when the corporation acts as general agent, i.e., in :—

- (11) The business name and address of the foreign firm as agent for whom the business is carried on including changes brought about by increase or decrease in the number of foreign firms for whom the corporation registered acts as general agent.

NOTE.—If the business is carried on as agent for three or more foreign firms, it is sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

REGISTRATION OF BUSINESS NAMES ACT, 1916. Section 2

“ Where a firm, individual or corporation having a place of business within the United Kingdom carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered there shall be furnished and registered the particulars mentioned in the Schedule to this Act :

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.”

SCHEDULE

Description of Firm, etc.	The additional Particulars
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee.	The present Christian name and surname, any former name, nationality, and usual residence, or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on: Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on: Provided that if the business is carried on as agent for three or more foreign firms, it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

FORM R.B.N. 4

The statement must be sent or delivered in—

England and Wales to the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2;

Scotland to the Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

Form R.B.N. 4

Registration of Business Names Act, 1916,

as amended by the Companies Act, 1947

No. of Certificate

NOTICE, PURSUANT TO SECTION 13 OF THE ACT, AS AMENDED, OF CESSATION OF BUSINESS BY A REGISTERED FIRM OR INDIVIDUAL, OR COMPANY.

Notice is hereby given that*.....

 ceased to carry on business *in such circumstances as to require registration under the Act*† on the.....day of.....19....
 of

Dated this.....day of.....19....

Signature
 or
 Signatures {

* Insert name and address of firm, individual or company as the case may be.

† In the case of a firm or individual delete words in *italics*.

NOTE.—This notice must in the case of a firm be signed by the persons who were partners of the firm at the time when it ceased to carry on business, in the case of an individual by the individual, except in the case of the death of an individual when it must be signed by the personal representative of the deceased, and in the case of a company by a director or a liquidator and must in all cases be sent by post, or delivered to the Registrar of Business Names within three calendar months after the business has ceased to be carried on.

Failure to give the required notice within the time above specified entails liability on conviction to a fine not exceeding £20.

APPENDIX III

Form R.B.N. 6
Registration of Business Names Act, 1916,
as amended by the Companies Act, 1947

FORM OF APPEAL FROM A DECISION OF THE REGISTRAR UNDER SECTION 14 (1)

I (We) (a).....
 of (a).....
 hereby give notice of appeal to the Board of Trade from the decision of the Registrar of the.....day of.....19...., whereby he decided (b).....

(b) Insert the decision complained of.

Accompanying this notice is a statement of the grounds of appeal and of my (our) case for the decision of the Board of Trade.

(c) I (We) desire to be heard by the Board of Trade on this appeal.

(c) Strike out if not so desired.

Dated the.....day of.....19....

(d) (Signed).....

(d) All individuals who are partners of an appellant firm, a director or the secretary of each corporation which is a partner of such firm, and a director or the secretary of an appellant company must sign.

To

The Registrar of Business Names : (c) Bush House, South West Wing, Strand, London, W.C.2 ; Exchequer Chambers, Parliament Square, Edinburgh.

This notice must have an adhesive stamp of the value of £1 affixed, and must be sent by post or delivered within twenty-one days of the date of the notice of the Registrar's decision, to the Registrar from whose decision the appellant appeals, together with a statement of the grounds of appeal and of the appellant's case in support thereof.

An unstamped copy of this notice of appeal, together with copies of the statement of the grounds of appeal and the case in support thereof, and a copy of the Registrar's decision must at the same time be sent by the appellant to the Assistant Secretary, Insurance and Companies Department, Board of Trade, Romney House, Tufton Street, London, S.W.1.

(c) Strike out any address which is not that of the Registrar whose decision is appealed from.

Form R.B.N. 7
Registration of Business Names Act, 1916,
as amended by the Companies Act, 1947

REQUEST BY AN INDIVIDUAL FOR AMENDMENT OF PARTICULARS

I,* hereby declare my former (Christian name(s) or surname as set out in the particulars registered under the Registration of Business Names Act, 1916, in accordance with my application dated.....was changed

† (a) before I attained the age of eighteen years, my date of birth being the.....day of.....19....;

† (b) on or about the.....day of.....19.... †
 being more than twenty years before the date of this request ; in consequence thereof and in pursuance of Section 116 (5) of the Companies Act, 1947, I hereby request that the said particulars be amended by leaving out that name or surname.

DATED this.....day of.....19....

Signature.....

* State present Christian name(s) and surname in block letters.

† Delete if inapplicable.

‡ Give the date as nearly as possible.

Form R.B.N. 7A
Registration of Business Names Act, 1916,
as amended by the Companies Act, 1947

REQUEST BY A FIRM FOR AMENDMENT OF PARTICULARS

Messrs. (hereinafter called "the firm") hereby declare that the former Christian name(s) or surname(s) of the partner(s) set out in the Schedule hereto were included in the particulars registered under the Registration of Business Names Act, 1916, in accordance with application dated....., and that such Christian name(s) or surname(s) was changed as set out in the said Schedule. In consequence thereof and in pursuance of Section 116 (5) of the Companies Act, 1947, the firm hereby request that the said particulars be amended by leaving out such name(s) or surname(s).

Dated this.....day of.....19....

(a) Signature(s).....

SCHEDULE

Former Christian name(s) or
surname(s)State whether such name(s) was changed
before bearer attained age of eighteen years or
more than twenty years prior to the date of this
request or both and give date of change as
nearly as possible.

(a) All individuals who are partners and a director or the secretary of each corporation which is a partner must sign.

Form R.B.N. 8

Registration of Business Names Act, 1916,*as amended by the Companies Act, 1947*

REQUEST BY AN INDIVIDUAL FOR REMOVAL FROM REGISTER

I.....* hereby declare
my former Christian name(s) or surname as set out in the particulars registered
under the Registration of Business Names Act, 1916, in accordance with my application
dated.....was changed

† (a) before I attained the age of eighteen years, my date of birth being
.....;

† (b) on or about the.....day of.....19... ‡
being more than twenty years before the date of this request ;

and that I was required to be registered under the said Act, by reason only of such
change of name. In consequence thereof and in pursuance of Section 116 (4) and (5)
of the Companies Act, 1947, I hereby request that I be removed from the said Register.

Dated this.....day of....., 19....

Signature.....

* State present Christian name(s) and surname in block letters.

† Delete if inapplicable.

‡ Give date as nearly as possible.

Form R.B.N. 8A

Registration of Business Names Act, 1916,*as amended by the Companies Act, 1947*

REQUEST BY A FIRM FOR REMOVAL FROM REGISTER

Messrs. (hereinafter called
"the firm") hereby declare that the former Christian name(s) or surname(s) of the
partner(s) set out in the Schedule hereto was included in the particulars registered
under the Registration of Business Names Act, 1916, in accordance with an application
dated....., that such Christian name(s) or
surname(s) was changed as set out in the said Schedule and that the firm was
required to be registered under the said Act by reason only of such change(s) of name.
In consequence thereof and in pursuance of Section 116 (5) of the Companies Act, 1947,
the firm hereby request that they be removed from the Register.

Dated this.....day of....., 19....

(a) Signature(s).....

SCHEDULE

Former Christian name(s) or
surname(s) of partner(s)State whether such name(s) was changed
before the bearer attained the age of eighteen
years or more than twenty years prior to the
date of this request or both and give date of
change as nearly as possible.

(a) All individuals who are partners and a director or the secretary of each corporation which is a partner must sign.

R.B.N.
S.D.

Registration of Business Names Act, 1916,

as amended by the Companies Act, 1947

FORM OF STATUTORY DECLARATION VERIFYING A STATEMENT FURNISHED
UNDER THE ACT

I
of
do hereby solemnly and sincerely declare that all the particulars contained in the
statement, dated the.....day of.....19...., and signed
by me, which is now produced and shown to me, marked.....
are true.

And I make this solemn declaration conscientiously believing the same to be true,
and by virtue of the Statutory Declarations Act, 1835.

Declared at..... }
this.....day of.....19.. }

Before me.....

R.B.N. Cert. 2

No. of Certificate

Registration of Business Names Act, 1916,

as amended by the Companies Act, 1947

CERTIFICATE OF REGISTRATION

I hereby certify that a statement of particulars furnished by.....
.....
pursuant to Section.....of the above-mentioned Act was registered on the
.....day of....., 19....

Dated this.....day of....., 19....

Registrar of Business Names.

Section 6 of the Act enacts that, if a change occurs in *any* of the particulars registered, such change must be notified to the Registrar on the prescribed form within fourteen days of its occurrence. The Board of Trade may, on application, allow an extension of the period within which such notification must be made.

Section 13 as amended enacts that, if a firm, individual or company, registered under the Act ceases to carry on business, the partners of the firm, the individual (or if he is dead his personal representative), or the directors or liquidators of a company must give notice thereof to the Registrar on the prescribed form, within three months after the business has ceased.

Section 18 enacts that all trade catalogues, trade circulars, show cards and business letters bearing the business name and issued by a firm or individual registered under the Act shall clearly state the Christian names and initials and the present surname, any former Christian names or surname, of each partner or individual, together with his nationality if not British. If a corporation is a partner its corporate name must also appear on the documents mentioned.

Section 11 enacts that certificates issued under the Act must be kept exhibited in a conspicuous position at the principal place of business.

Forms of notification of change or cessation may be obtained from the Registrar of Business Names, Bush House, South West Wing, Strand, London, W.C.2, or Registrar of Business Names, Exchequer Chambers, Parliament Square, Edinburgh.

APPENDIX IV

THE COMPANIES (UNREGISTERED COMPANIES) REGULATIONS, 1948

(S.I. 1948 No. 1398)

<i>Made</i>	25th June, 1948
<i>Laid before Parliament</i>	28th June, 1948
<i>Coming into Operation</i>	1st October, 1948, and 1st July, 1949

The Board of Trade in pursuance of the powers conferred on them by Section 108 and the Sixth Schedule of the Companies Act, 1947, and all other powers in that behalf enabling them hereby make the following regulations :—

1. The provisions of the Companies Acts, 1929, and 1947 (a), relating to prospectuses, allotments, annual return, accounts and audit as specified in the second column of the Sixth Schedule to the Companies Act, 1947, shall apply to any unregistered company, being a body corporate incorporated in and having a principal place of business in Great Britain, other than :—

- (a) a body incorporated by or registered under a public general Act of Parliament ;
- (b) a body not formed for the purpose of carrying on business which has for its object the acquisition of gain by the body or by the individual member thereof ; or
- (c) a body for the time being exempted by direction of the Board of Trade.

2.—(1) These Regulations may be cited as the Companies (Unregistered Companies) Regulations, 1948.

(2) Save in the case of bodies corporate incorporated by private Acts of Parliament and carrying on water, hydraulic power or pier undertakings, these Regulations shall come into force on the 1st day of October, 1948, and in the case of such bodies corporate on the 1st day of July, 1949.

NOTE.—As to the force of regulations made under former enactments relating to companies, see Companies Act, 1948, s. 459 (2), *ante*.

Companies Act, 1947, Sixth Schedule.—See now Companies Act, 1948, Fourteenth Schedule, *ante*.

THE COMPANIES (WINDING-UP) RULES, 1929

(S.R. & O. 1929, No. 612)

DATED AUGUST 29, 1929, MADE PURSUANT TO THE COMPANIES ACT, 1929

[PRINTED AS AMENDED BY THE COMPANIES (WINDING-UP) AMENDMENT RULES, 1929, S.R. & O. 1929 No. 1177 ; THE COMPANIES (WINDING-UP) AMENDMENT (No. 1) RULES, 1932, S.R. & O. 1932 No. 802 ; THE COMPANIES (WINDING-UP) AMENDMENT RULES, 1933, S.R. & O. 1933 No. 234 ; AND THE COMPANIES (WINDING-UP) AMENDMENT (No. 1) RULES, 1944, S.R. & O. 1944 No. 655].*

PRELIMINARY

1. Application of rules.—Subject to the limitation hereinafter mentioned these Rules shall apply to the proceedings in every Winding-up under the Act of a Company which shall commence on and after the date on which these Rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date, in the Winding-up of a Company which commenced on or after the first day January, 1891. Rules which from their nature and subject matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a Winding-up by the Court, or only to such proceedings and proceedings in a creditors' Voluntary Winding-up shall not apply to the proceedings in a Voluntary Winding-up, or as the case may be in a members' Voluntary Winding-up whether any such Voluntary Winding-up is or is not being continued under the Supervision of the Court.

NOTE.—For the savings enacted by the Companies Act, 1948, in respect of rules, see section 459 (2) of that Act, *ante*.

*The words between bold brackets are not part of the official text and are included for convenience only.

2. Interpretation of terms.—In these Rules, unless the context or subject-matter otherwise requires :—

“ The Act ” means the Companies Act, 1929.

“ The Company ” means a company which is being wound-up, or against which proceedings to have it wound-up have been commenced.

“ Judge ” means in the High Court the Judge who for the time being exercises the jurisdiction of the High Court to wind-up Companies, and in any Court the Judge thereof, or officer who exercises the powers of the Judge thereof.

“ Proceedings ” means the proceedings in the winding-up of a Company under the Act.

“ Registrar ” means in the High Court any of the Registrars in Bankruptcy of the High Court, and any person who shall be appointed to fill the office of Registrar under these Rules, and where a winding-up of a Company is in the District Registry of Liverpool or Manchester means the District Registrar ; and in a County Court, where there are joint Registrars means either of such Registrars, or a Deputy Registrar, and in any Court other than the High Court, means the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a Registrar or Master.

“ The Rules ” means these Rules, and includes the prescribed Forms.

“ Sealed ” means sealed with the seal of the Court.

“ Taxing Officer ” means the Officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

3. Use of forms in Appendix.—(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same unless the Court shall otherwise direct.

(2) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *London Gazette*.

NOTE.—Forms are throughout referred to by reference to their numbers in the Appendix to these rules, which is not printed in this book. Amendments to forms, effected by S.R. & O. 1931 No. 70 and S.R. & O. 1937 No. 115, have been noted.

COURT AND CHAMBERS

4. Office of Registrar in High Court.—(1) All proceedings in the winding-up of Companies in the High Court shall from time to time be attached to one or more of the Registrars, who shall, together with the necessary clerks and officers, and subject to the Act and Rules, act under the general or special directions of the Judge.

(2) Every other Registrar may act for and in place of such Registrar as above-mentioned in all proceedings under the Acts and Rules, including the holding of public examinations, and when so acting such other Registrar shall be deemed to be the Registrar for the purposes of the Act and Rules.

(3) In every cause or matter within the jurisdiction of the Judge, whether by virtue of the Act, or by transfer, or otherwise, the Registrar shall, in addition to his powers and duties under the Rules, have all the powers and duties of a Master, Registrar, or Taxing Master.

5. Matters in High Court to be heard in Court and Chambers.—

(1) The following matters and applications in the High Court shall be heard in open Court :—

(a) Petitions.

(b) Appeals to the High Court from the Board of Trade and from the Official Receiver when acting as Official Receiver and not as Liquidator.

(c) Applications under section 285 of the Act.

(d) Applications under section 294 of the Act.

(e) Applications for the committal of any person to prison for contempt.

(f) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard in open Court.

(2) Examinations of persons summoned before the High Court under section 214 of the Act, shall be held in Court or in Chambers as the Court shall direct.

(3) Every other matter or application in the High Court under the Act to which the Rules apply may be heard and determined in Chambers.

NOTES.—Section 285. See now section 343, *ante*.

Section 294. See now section 352, *ante*.

Section 214. See now section 268, *ante*.

6. Proceeding in Courts other than High Court.—(1) In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court :—

- (a) Petitions.
- (b) Public Examinations.
- (c) Applications under sub-section (1) of section 277 of the Act.
- (d) Applications to rectify the Register.
- (e) Appeals from the Official Receiver and Board of Trade.
- (f) Appeals from any decision or act of the Liquidator.
- (g) Applications relating to the admission or rejection of proofs.
- (h) Proceedings under section 276 of the Act.
- (i) Applications under section 294 of the Act.
- (j) Applications under section 285 of the Act.
- (k) Applications under sub-section (1) and (2) of section 275 of the Act and such applications under sub-section (4) of the said section as can be made to the Court.
- (l) Applications under section 217 of the Act.
- (m) Applications under sub-section (2) of section 372 of the Act.
- (n) Applications for the committal of any person to prison for contempt.
- (o) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard in open Court.

(2) Any other matter or application may be heard and determined in Chambers.

NOTES.—Section 277 (1). See now section 334 (1), *ante*.

Section 276. See now section 333, *ante*.

Section 294. See now section 352, *ante*.

Section 285. See now section 343, *ante*.

Section 275. See now section 332, *ante*.

Section 217. This section was repealed by section 123 of the 1947 Act.

Section 372 (2). See now section 448 (2), *ante*.

7. Applications in Chambers.—Subject to the provisions of the Act and Rules in every Court :—

- (1) The Registrar may under the general or special directions of the Judge hear and determine any application or matter which under the Act and Rules may be heard and determined in Chambers.
- (2) Any matter or application before the Registrar may at any time be adjourned by him to be heard before the Judge either in Chambers or in Court.
- (3) Any matter or application may, if the Judge or as the case may be, the Registrar, thinks fit be adjourned from Chambers to Court, or from Court to Chambers.

8. Motions and Summonses.—(1) Every application in Court other than a petition shall be made by motion, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the Sittings of the Court.

(2) Every application in Chambers shall be made by summons, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

NOTE.—The form is No. 1 (form of summons (general)).

9. Place of Sitting of County Court.—Subject to the orders of the Lord Chancellor the place of Sitting of each County Court having jurisdiction under the Act shall for the purposes of such jurisdiction, be the town and place in which the Court holds its Sittings for the general business of the Court, under the County Courts Acts.

10. Times for holding Courts other than the High Court.—Subject to the provisions of the Act, the times of the Sitting of each Court, other than the High Court in matters of the winding-up of Companies shall be those which are appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order.

PROCEEDINGS

11. Title of proceedings.—(1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intitled in the matter of the company to which it relates and in the matter of the Companies Act, 1929, and otherwise as in Forms 2 and 3. Numbers and dates may be denoted by figures.

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

NOTE.—*Form 3.* A new form was substituted by Order of the Board of Trade, dated January 29, 1937, S.R. & O. 1937 No. 115.

Companies Act, 1929. The 1929 Act is repealed by the 1948 Act, Seventeenth Schedule, Part I, as from July 1, 1948, and replaced by the 1948 Act.

12. Written or printed proceedings.—All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

13. Process to be sealed.—All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any winding-up matter shall be sealed.

14. Issue of Summonses.—Every summons in a winding-up matter in the High Court shall be prepared by the applicant or his solicitor, and issued from the office of the Registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the Registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

15. Orders.—Every order, whether made in Court or in Chambers in the winding-up of a Company shall be drawn up by the Registrar, unless in any proceeding, or classes of proceedings, the Judge or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge or the Registrar making the order, shall be sufficient evidence of the order having been made.

NOTE.—As to orders to stay, see now section 256.

16. File of proceedings in office of Registrar (High Court).—All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs and other proceedings in the High Court in a winding-up matter shall be kept and remain of record in the office of the Registrar and, subject to the directions of the Court, shall be placed in one continuous file, and no proceedings in any winding-up matter shall be filed in the Central Office.

17. File of proceedings in Courts other than High Court.—In Courts other than the High Court a file of proceedings in every winding-up matter shall be kept on which, subject to the directions of the Court, all petitions, affidavits, summonses, orders, proofs, notices, depositions, and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order.

18. Office copies.—In every Court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any liquidator, contributory, creditor, officer of a Company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

19. Inspection of file.—Every person who has been a director or officer of a Company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled [on payment of the prescribed fee], at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or be furnished with such copies or extracts [on payment of the prescribed fee].

NOTE.—The words between square brackets were inserted, in substitution for words establishing a fee of 1s. per hour and a rate not exceeding 4d. a folio respectively, by the Companies (Winding-Up) Amendment Rules, 1929, S.R. & O. 1929 No. 1177. These rules superseded on December 31, 1929, the Companies (Winding-Up) Amendment Rules, 1929, which had come into force as provisional rules on November 1, 1929.

20. Use of file by Board of Trade and Official Receiver.—Where, in the exercise of their functions under the Act or Rules, the Board of Trade or the Official Receiver requires to inspect or use the file of proceedings the Registrar shall (unless the file is at the time required for use in Court or by him) on request, transmit the file of proceedings to the Board of Trade or Official Receiver, as the case may be.

21. Defacement of stamps.—Every officer of a Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon, in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other Court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made.

SERVICE AND EXECUTION OF PROCESS AND ENFORCEMENT OF ORDERS

22. Duties of Bailiff in County Court.—(1) It shall be the duty of the High Bailiff of a County Court to serve such orders, summonses, petitions and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court (but not sittings in Chambers); and to do and perform all such things as may be required of him by the Court.

(2) Nothing in this Rule shall require any order, summons, petition, or notice, to be served by a bailiff or officer of the Court which is not specially by the Act or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

[**22a.**—(1) Payment by the High Bailiff of a County Court to the Registrar, pursuant to the County Court Rules for the time being in force, of any money seized or received by the High Bailiff in part satisfaction of an execution against the goods of a company shall be a good discharge to him as against the Liquidator under section 269 (1) of the Act, provided that the payment is made without notice that a Provisional Liquidator has been appointed or that an order has been made or a resolution passed for the winding-up of the company.

(2) Where notice is given to the High Bailiff of such an appointment order or resolution as is mentioned in paragraph (1) of this Rule, he shall forthwith inform the Registrar, and the Registrar shall, after deducting the costs of the execution, on request pay over to the Liquidator all monies paid to him by the High Bailiff in respect of the execution and not paid out by the Registrar before he has notice of the appointment, order or resolution.]

NOTES.—This rule was inserted by the Companies (Winding-Up) Amendment Rules, 1929, S.R. & O. 1929 No. 1177, r. 2. These rules superseded, on December 31, 1929, the Companies (Winding-Up) Amendment Rules, 1929, which had come into force as provisional rules on November 1, 1929.

Section 269 (1). See now section 326 (1), *ante*.

23. Service.—(1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the

notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

24. Enforcement of Orders.—(1) Every order of a Court having jurisdiction to wind up a Company, made in the exercise of the powers conferred by the Acts and Rules, may be enforced by such Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

(2) Every such order of a County Court, and every process issued therein may be enforced, executed and dealt with not only by such Court, but by any County Court, whether such County Court has or has not jurisdiction to wind up a Company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last mentioned Court in the exercise of its ordinary jurisdiction.

PETITION

25. Form of petition.—Every petition for the winding-up of a Company by the Court, or subject to the supervision of the Court, shall be in the Forms Nos. 4 and 5 in the Appendix with such variations as circumstances may require.

26. Presentation of petition.—A petition shall be presented at the office or chambers of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the Registrar may at any time before the Petition has been advertised, alter the time appointed, and fix another time.

27. Advertisement of petition.—Every petition shall be advertised seven clear days before the hearing as follows:—

- (1) In the case of a Company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs.
- (2) In the case of any other Company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known principal place of business, as the case may be, of such Company is or was situate, or in such other newspaper as shall be directed by the Court.
- (3) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 33, and an advertisement of a petition for the winding-up of a Company by the Court which does not contain such a note shall be deemed irregular.

And if the petitioner or his solicitor does not within the time hereby prescribed or within such extended time as the Registrar may allow duly advertise the petition in the manner prescribed by this Rule the appointment of the time and place at which the petition is to be heard shall be cancelled by the Registrar and the petition shall be removed from the file in the Companies (Winding-up) Office unless the Judge or the Registrar shall otherwise direct.

NOTE.—The Form is No. 6 (advertisement of petition).

28. Service of petition.—Every petition shall, unless presented by the Company, be served upon the Company at the registered office, if any, of the Company, and if there is no registered office, then at the principal or last known

principal place of business of the Company, if any such can be found, by leaving a copy with any member, officer, or servant of the Company there, or in case no such member, officer, or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the Company as the Court may direct; and where the Company is being wound up voluntarily, the petition shall also be served upon the Liquidator (if any), appointed for the purpose of winding-up the affairs of the Company.

NOTE.—The Forms are Nos. 7 (affidavit of service on members, officers or servants), and 8 (affidavit of service of petition on liquidation).

29. Verification of petition.—Every petition for the winding-up of a Company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

NOTE.—The Forms are Nos. 9 (affidavit verifying petition) and 10 (affidavit verifying petition of limited company).

30. Copy of petition to be furnished to creditor or contributory.—Every contributory or creditor of the Company shall be entitled to be furnished, by the solicitor of the petitioner with a copy of the petition, within 24 hours after requiring same, on paying the rate of 4d. per folio of 72 words for such copy.

PROVISIONAL LIQUIDATOR

31. Appointment of Provisional Liquidator.—(1) After the presentation of a petition, upon the application of a creditor, or of contributory, or of the Company, and upon proof by affidavit of sufficient ground for the appointment of a Provisional Liquidator, the Court, if it thinks fit and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

(2) The order appointing the Provisional Liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the Provisional Liquidator is ordered to take possession, and the duties to be performed by the Provisional Liquidator.

(3) Subject to any order of the Court, if no order for the winding-up of the Company is made upon the petition, or if an order for the winding-up of the Company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the Company subject to the supervision of the Court, the Provisional Liquidator shall be entitled to be paid, out of the property of the Company, all the costs, charges, and expenses properly incurred by him as Provisional Liquidator, including such sum as is or would be payable under the scale of fees for the time being in force where the Official Receiver is appointed Provisional Liquidator, and may retain out of such property the amounts of such costs, charges, and expenses.

(4) Where any person other than the Official Receiver has been appointed Provisional Liquidator and the Official Receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these Rules the Provisional Liquidator shall pay the Official Receiver such sum, if any, as the Court directs.

NOTE.—The Form is No. 11 (Order appointing a provisional liquidator after presentation of petition and before order to wind up).

HEARING OF PETITIONS AND ORDERS MADE THEREON

32. Attendance before hearing to show compliance with rules.—After a petition has been presented, the petitioner, or his solicitor shall, on a day to be appointed by the Registrar, attend before the Registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the Rules as to petitions for winding-up

Companies have been duly complied with by the petitioner. No order for the winding-up of a Company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed, and satisfied him in manner required by this Rule.

33. Notice by persons who intend to appear.—Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his solicitor or London agent, at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or by his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition, or if such day be a Monday, not later than one o'clock in the afternoon of the Saturday previous to such day. The notice shall be in Form 12 with such variations as circumstances may require. A person who has failed to comply with this Rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

34. List of names and addresses of persons who appear on the petition.—The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 13. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his solicitor or London agent, to the Court prior to the hearing of the petition.

35. Affidavits in opposition and reply.—(1) Affidavits in opposition to a petition that a Company may be wound up by or subject to the supervision of the Court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner.

36. Substitution of creditor or contributory for withdrawing petitioner.—When a petitioner is not entitled to present a petition, or whether so entitled or not, where he (1) fails to advertise his petition within the time by these Rules prescribed or such extended time as the Registrar may allow or (2) consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or (3) if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition. An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed by these rules or consents to withdraw his petition, be made in Chambers at any time.

ORDER TO WIND UP A COMPANY

37. Notice that winding-up order has been pronounced to be given to Official Receiver.—When an order for the winding-up of a Company, or for the appointment of a Provisional Liquidator prior to the making of an order for the winding-up of the Company, has been made, the Registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

The notice shall be in Forms 14 and 15 respectively, with such variations as circumstances may require.

38. Documents for drawing up order to be left with Registrar.—It shall be the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the

day following the day on which an order for the winding-up of a Company is pronounced in Court to leave at the Registrar's office all the documents required for the purpose of enabling the Registrar to complete the order forthwith.

39. No appointment for settling order.—It shall not be necessary for the Registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

40. Contents of winding-up order.—An order to wind up a Company or for the appointment of a Provisional Liquidator shall contain at the foot thereof a notice stating that it will be the duty of such of the persons who are liable to make out or concur in making out the Company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

NOTE.—The Forms are Nos. 11 (order appointing a provisional liquidator after presentation of petition and before order to wind up); 16 (order for the winding up by Court).

41. Transmission and advertisement of winding-up order.—

(1) When an order that a Company be wound up, or for the appointment of a Provisional Liquidator has been made :—

- (a) Three copies of the order sealed with the seal of the Court shall forthwith be sent by post or otherwise by the Registrar to the Official Receiver.
- (b) The Official Receiver shall cause a sealed copy of the order to be served upon the Company by prepaid letter addressed to it at its registered office (if any) or if there is no registered office at its principal or last known principal place of business or upon such other person or persons, or in such other manner as the Court may direct, and if the order is that the Company be wound up by the Court, shall forward to the Registrar of Companies the copy of the order which by section 176 of the Act is directed to be so forwarded by the Company or otherwise as may be prescribed.
- (c) The Official Receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted.
- (d) The Official Receiver shall forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

(2) An order for the winding-up of a Company subject to the supervision of the Court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the *London Gazette*, and shall be served on such persons (if any) and in such manner as the Court shall direct.

NOTES.—Section 176. See now section 230, *ante*.

Notice to be gazetted. The Form is No. 103 (1) (notice of winding-up order).

Notice for newspaper. The Form is No. 17 (notice of order to wind up (for newspaper)).

Order for winding up. The Form is No. 18 (order for winding-up subject to supervision).

[41a. For the purposes of section 269 of the Act a notice that (1) a winding up petition has been presented, or (2) a winding-up order has been made, or (3) a provisional liquidator has been appointed, or (4) a meeting has been called at which there is to be proposed a resolution for the voluntary winding-up of the company, or (5) a resolution has been passed for the voluntary winding-up of the company, shall be in writing and shall be addressed, where the execution is in respect of a judgment of the High Court, to the Sheriff, and in any other case, to the officer charged with the execution, and may be served by being delivered by hand or by registered post, in the case of a notice to a Sheriff, at the office of the Under-Sheriff, and in any other case, at the office of the officer charged with the execution :

Provided that where a winding-up petition is presented or a winding-up order is made or a provisional liquidator is appointed in a County Court the Registrar of which is also the High Bailiff of that Court, the filing of the petition or the making of the order or the appointment of a provisional liquidator shall, for the purposes of that section, be sufficient notice to him in his capacity as High Bailiff of that Court, that the petition has been presented or the order made or the provisional liquidator appointed, as the case may be.]

NOTES.—This rule was inserted by the Companies (Winding-Up) Amendment Rules, 1933, S.R. & O. 1933 No. 234, which came into operation on April 18, 1933.

Section 269. See now section 326, *ante*.

TRANSFERS OF ACTIONS AND PROCEEDINGS

42. Transfer of actions.—(1) Where an order has been made for the winding-up of a Company then if such order was made by the High Court or if the proceedings have been transferred to the High Court the Judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the Company, and any action or proceeding by a mortgagee or debenture holder of the Company against the Company, for the purpose of realising his security, or by any other person for the purpose of enforcing a claim against the Company's assets or property, which is pending in the High Court or before any Judge thereof shall without further order be transferred to the Judge of the High Court. In the case of applications in Chambers in actions so transferred where the practice in winding-up is different from the practice in the Chancery Division the practice in winding-up shall prevail.

(2) Where any action brought by or against a Company against which a winding-up order has been made is transferred to the Judge of the High Court, the Registrar may, under the general or special directions of the Judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in Chambers. These provisions shall apply to the proceedings in any action in which by the Rules of the Supreme Court or otherwise the Chamber proceedings are directed to be dealt with by the Registrar.

43. Transfer of proceedings by Judge of High Court.—The Judge of the High Court may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court.

NOTE.—The Form is No. 19 (order of transfer).

44. Transfer of proceedings by Judge of Court other than High Court or Palatine Court.—The Judge of any Court, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding-up of a Company, not being the High Court or a Palatine Court.

NOTE.—The Form is No. 19 (order of transfer).

45. Notice of application to Official Receiver.—In a winding-up by the Court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the Official Receiver of the Court in which the proceedings are pending and on the Official Receiver of the Court to which the proceedings are sought to be transferred.

46. Procedure where proceedings transferred.—When an order for the transfer of proceedings has been made :—

- (1) The person on whose application the transfer has been made shall lodge with the Registrar of the Court to which the proceedings are transferred a sealed copy of the order of transfer.
- (2) In a winding-up by the Court the Official Receiver of the Court to which the proceedings are transferred shall (unless the Court which orders the transfer or the Court to which the proceedings are transferred shall direct that some other Official Receiver shall become Official Receiver in the proceedings) become the Official Receiver in the proceedings.
- (3) The records of the proceedings shall be transmitted to the Registrar of the Court to which the proceedings are transferred, and in a winding-up by the Court such Registrar, as soon as he has received the records, shall give notice of the transfer to the Official Receiver of his Court, or other the person who has become Official Receiver in the proceedings and such Official Receiver shall give notice of the transfer to the Board of Trade.
- (4) The proceedings shall receive a new distinctive number.

NOTE.—The Form is No. 20 (notice of transfer of proceedings to the Board of Trade and Official Receiver).

47. Transfer of jurisdiction of County Court.—Whenever the Lord Chancellor, by order under his hand, shall exclude any County Court from having jurisdiction under the Act, or shall attach the district or any part of the district of a County Court to any other County Court, any winding-up matters pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order; and, thereupon, the Rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings.

SPECIAL MANAGER

48. Appointment of Special Manager.—(1) An application by the Official Receiver for the appointment of a special manager shall be supported by a report of the Official Receiver, which shall be placed on the file of proceedings, and such report shall either state the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager, or that it is, in the opinion of the Official Receiver, desirable that the fixing of such remuneration should be deferred. No affidavit by the Official Receiver in support of the application shall be required.

(2) The remuneration of the special manager shall, unless the Court otherwise in any case directs, be stated in the order appointing him, but the Court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

(3) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the Official Receiver.

49. Accounting by Special Manager.—Every special manager shall account to the Official Receiver, and the Special Manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added by the Official Receiver to his accounts.

NOTE.—The Form is No. 21 (affidavit by special manager verifying account).

STATEMENT OF AFFAIRS

50. Preparation of statement of affairs.—(1) A person who under section 181 of the Act has been required by the Official Receiver to submit and verify a statement of affairs of a Company, shall be furnished by the Official Receiver with such forms and instructions as the Official Receiver in his discretion shall consider necessary. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the Registrar the verified statement of affairs.

(2) The Official Receiver may from time to time hold personal interviews with any such person as is mentioned in paragraphs (a), (b), (c) or (d) of subsection (2) of section 181 of the Act for the purpose of investigating the Company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.

NOTES.—The Form is No. 22 (Statement of Affairs). See also rule 59, *infra*. The period in respect of certain preferential payments has been altered (see section 319, *ante*). The period in which a floating charge can be upset is now twelve months (see section 322, *ante*).

Section 181.—See now section 235, *ante*.

51. Extension of time for submitting statement of affairs.—When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up and shall render an application to the Court unnecessary.

52. Information subsequent to statement of affairs.—After the statement of affairs of a Company has been submitted to the Official Receiver it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Receiver in relation to the Statement of Affairs.

53. Default.—Any default in complying with the requirements of section 181 of the Act may be reported by the Official Receiver to the Court.

NOTE.—Section 181. See now section 235, *ante*.

54. Expenses of statement of affairs.—A person who is required to make or concur in making any statement of affairs of a Company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Receiver for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person shall be allowed out of the assets of the Company any costs or expenses which have not before being incurred been sanctioned by the Official Receiver.

55. Dispensing with Statement of affairs.—(1) Any application to dispense with the requirements of section 181 of the Act shall be supported by a report of the Official Receiver showing the special circumstances which in his opinion render such a course desirable.

(2) When the Court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notices which are by these rules required to be sent to any person mentioned in the Statement of Affairs.

NOTE.—Section 181. See now section 235, *ante*.

APPOINTMENT OF LIQUIDATOR IN A WINDING-UP BY THE COURT

56. Appointment of Liquidator on report of meetings of creditors and contributories.—(1) As soon as possible after the first meeting of creditors and contributories have been held the Official Receiver, or the Chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences, and making such order as shall be necessary. In any other case the Court may upon the application of the Official Receiver forthwith make any appointment necessary for giving effect to any such resolutions or determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings the Court shall hear the Official Receiver and any creditor or contributory.

(5) If a Liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the Official Receiver, and the Board of Trade shall, as soon as the Liquidator has given security, cause notice of the appointment to be gazetted. The expense, of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the Company.

(6) Every appointment of a Liquidator or Committee of Inspection shall be advertised by the Liquidator in such manner as the Court directs immediately after the appointment has been made, and the Liquidator has given the required security.

(7) If a Liquidator in a winding-up by the Court shall die, or resign, or be removed, another Liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one-tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this Rule shall apply where the Liquidator is released under section 197 of the Act in which case the Official Receiver shall remain Liquidator.

NOTES.—Rule 56 (1). The Form is No. 23 (report of results of meeting of creditors or contributories).

Rule 56 (5). The Forms are Nos. 24 (order appointing liquidator) and 103 (7) (notice of appointment of liquidator).

Rule 56 (6). The Form is No. 25 (advertisement of appointment of liquidator).

Rule 56 (7). The Form is No. 103 (8) (notice of removal of liquidator). As to section 197, see now section 251, *ante*.

**SECURITY BY LIQUIDATOR OR SPECIAL MANAGER IN A WINDING-UP
BY THE COURT**

57. Standing security to Board of Trade.—In the case of a Special Manager or a Liquidator other than the Official Receiver, the following provisions as to security shall have effect, namely :—

- (1) The security shall be given to such officers or persons and in such manner as the Board of Trade may from time to time direct.
- (2) It shall not be necessary that security shall be given in each separate winding-up ; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed, either as Liquidator or Special Manager.
- (3) The Board of Trade shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.
- (4) The certificate of the Board of Trade that a Liquidator or Special Manager has given security to their satisfaction shall be filed with the Registrar.
- (5) The cost of furnishing the required security by a Liquidator or Special Manager, including any premiums which he may pay to a Guarantee Society, shall be borne by him personally, and shall not be charged against the assets of the Company as an expense incurred in the winding-up.

NOTE.—*Rule 57 (4).* The certificate is Form No. 26 (certificate that liquidator or special manager has given security).

58. Failure to give or keep up security.—(1) If a Liquidator or Special Manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the Official Receiver shall report such failure to the Court, who may thereupon rescind the order appointing the Liquidator or Special Manager.

(2) If a Liquidator or Special Manager fails to keep up his security the Official Receiver shall report such failure to the Court, who may thereupon remove the Liquidator or Special Manager, and make such order as to costs as the Court shall think fit.

(3) Where an order is made under this Rule rescinding an order for the appointment of or removing a Liquidator, the Court may direct that meetings shall be held for the purpose of determining whether an application shall be made to the Court for another Liquidator to be appointed and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a Liquidator.

PUBLIC EXAMINATION

59. Consideration of report.—The consideration of a report made by the Official Receiver pursuant to subsection (2) of section 182 of the Act shall be before the Judge of the Court personally in Chambers, and the Official Receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

NOTE.—*Section 182 (2).* See now section 236 (2), *ante*.

60. Procedure consequent on order for public examination.—Where the Judge makes an order under section 216 of the Act, directing any person or persons to attend for public examination :—

- (a) The examination shall be held before the Judge : Provided that in the High Court the Judge may direct that the whole or any part of the examination of any such person or persons, including any application as to costs, be held and heard and determined before the Registrar, or before any of the persons mentioned in subsection (9) of the said section.
- (b) The Judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to the special matters on which any such person is to be examined.
- (c) Where on an examination held before the Registrar, or one of the persons mentioned in subsection (9) of the said section, he is of opinion that such examination is being unduly or unnecessarily protracted, or for

any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the Judge.

NOTES.—The Form is No. 27 (order directing public examination).

Section 216. See now section 270, *ante*. As to the persons whose attendance may be compelled, see now section 270 (1), *ante*.

61. Application for day for holding examination.—Upon an order directing a person to attend for public examination being made, the Official Receiver shall, unless the Judge shall otherwise direct, without further order take an appointment for the public examination to be held.

62. Appointment of time and place for public examination.—A day and place shall be appointed for holding the public examination and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

NOTE.—The Form is No. 28 (notice to attend public examination).

63. Notice of public examination to creditors and contributories.—(1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the Official Receiver thinks fit, and shall also forward notice of the appointment to the Board of Trade to be gazetted.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised in any newspaper, but it shall be sufficient to publish in the gazette a notice of the time and place fixed for the adjourned examination.

NOTE.—The Form is No. 103 (3) (notice of day appointed for public examination).

64. Default in attending.—(1) If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the Official Receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon it being proved to the satisfaction of the Court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.

(2) A warrant of arrest issued by the High Court under this Rule shall be issued in the Central Office of the Supreme Court pursuant to an order of the Court directing such issue.

NOTE.—The Form is No. 29 (warrant against person who fails to attend examination).

65. Notes of examination to be filed.—The notes of every public examination shall, after being signed as required by section 216 (7) of the Act, be filed with the Registrar.

NOTE.—Section 216 (7). See now section 270 (7), *ante*. The Forms are Nos. 30 (notice of public examination where a shorthand writer is appointed) and 31 (notice of public examination where a shorthand writer is *not* appointed).

PROCEEDINGS BY OR AGAINST DIRECTORS, PROMOTERS, AND OFFICERS

66. Application by or against delinquent directors, officers and promoters.—(1) An application made to the Court under any of the following provisions of the Act :—

(1) Section 276.

(2) Subsections (1) (2) or (4) of section 275.

(3) Section 217.

(4) Subsection (2) of section 372.

shall in any court other than the High Court be made by motion to the Court. In the High Court the application shall be made by a summons returnable in

the first instance in Chambers. The summons shall state the nature of the declaration or order for which application is made, and the grounds of the application, and, unless otherwise ordered, shall be served, in the manner in which an originating summons is required by the Rules of the Supreme Court to be served, on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. Where any such application is made by summons no affidavit or report shall be filed before the return of the summons.

(2) On the return of the summons the Court may give such directions as it shall think fit as to whether points of claim and defence are to be delivered as to the taking of evidence wholly or in part by affidavit or orally, and the cross examination either before the Judge on the hearing in Court or in Chambers of any deponents to affidavits in support of or in opposition to the application and as to any report it may require the Official Receiver or Liquidator to make and generally as to the procedure on the summons and for the hearing thereof.

(3) Where any such order as is mentioned in paragraph (2) of this Rule has directed that points of claim and defence shall be delivered then if subsequently to such order and before the summons has been set down for trial or adjourned to the Judge either party wishes to apply for any further direction as to any interlocutory matter or thing he shall restore the summons to the Registrar's list and shall give two clear days' notice in writing to the other party stating the grounds of the application. A copy of such notice shall be filed with the Registrar two clear days before the day for which the summons is restored.

NOTES.—Section 276. See now section 333, *ante*.

Section 275 (1), (2) or (4). See now section 332 (1), (2), *ante*. Section 275 (4) of the 1929 Act was repealed by section 123 of the 1947 Act and the Ninth Schedule thereto.

Section 217. This section was repealed by section 123 of the 1947 Act and the Ninth Schedule thereto. Its provisions are replaced by section 188, *ante*.

Section 372 (2). See now section 448 (2), *ante*.

67. Notice of application.—Where the application is made by motion the Court may at any time before making an order require the Official Receiver or Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application and may give any directions it may see fit with regard to any of the matters mentioned in paragraph (2) of the last preceding Rule. Notice of any such intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

68.—(1) Where any application under section 217 of the Act is made or heard after a public examination under section 216 of the Act which has been held before the Registrar or any of the persons mentioned in subsection (9) of the said section 216 then unless the Judge shall otherwise direct such application shall be heard and determined by such Registrar or other person.

The Judge shall personally hear all other applications under the said section 217 and all applications which may be made to the Court under subsection (4) of section 275 of the Act: Provided that in the High Court the Judge may direct that such applications or any of them shall be heard and determined by the Registrar.

(2) Where any order has been made under the said section or subsection any application for leave arising out of such order shall be made in the winding-up of the Company in relation to which such order was made and the dissolution of the Company or the stay of all proceedings in such winding-up shall not be a bar to such application or to the granting of leave.

NOTES.—Section 217. This section was repealed by section 123 of the 1947 Act and the Ninth Schedule thereto. Its provisions are replaced by section 188, *ante*.

Section 216. See now section 270, *ante*.

Section 275 (4). These provisions were repealed by section 123 of the 1947 Act and the Ninth Schedule thereto. See now, however, section 188, *ante*.

69. Use of depositions taken at public examinations.—Where in the course of the proceedings in a winding-up by the Court an order has been made for the public examination of persons named in the order pursuant to section 216 of the Act, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in paragraph (1) of Rule 66, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made, who, under section 216 of the Act, and the order for the public examination, was or had the opportunity of being present at and taking part in the examination: Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

NOTE.—Section 216. See now section 270, *ante*.

WITNESSES AND DEPOSITIONS

70. Shorthand Notes.—If the Court or the officer of the Court before whom any examination under the Act and Rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding 8*d.* per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the Company as may be directed by the Court.

NOTE.—The Forms are Nos. 32 (application for appointment of shorthand writer to take down notes of public examination and order thereon), and 33 (declaration of shorthand writer).

71. Committal of contumacious witness.—(1) If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer shall report such refusal to the Judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

(2) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The Registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge, and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such report may be reported immediately.

NOTE.—The Form is No. 34 (report to the Court where person examined refuses to answer to satisfaction of Registrar or officer).

72. Depositions at private examinations.—(1) The Official Receiver may attend in person, or by an assistant Official Receiver, or by counsel or by solicitors employed for the purpose, any examination of a witness under section 214 of the Act, on whosoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the Court may allow.

(2) The notes of the depositions of a person examined under section 214 of the Act, or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 216 of the Act) shall be forthwith lodged in the Chambers of the Registrar but shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the Official Receiver or Liquidator, or any Provisional Liquidator other than the Official Receiver, while he is acting as Provisional Liquidator, unless and until the Court shall so direct, and the Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

NOTES.—Section 214. See now section 268, *ante*.

Section 216. See now section 270, *ante*.

DISCLAIMER

73. Disclaimer.—(1) Any application for leave to disclaim any part of the property of a Company pursuant to subsection (1) of section 267 of the Act shall be by *ex parte* summons. Such summons shall be supported by an affidavit showing who are the parties interested and what their interests are. On the hearing of the summons the Court shall give such directions as it sees fit and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(2) Where a liquidator disclaims a leasehold interest he shall forthwith file the disclaimer at the office of the Registrar. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the liquidator the disclaimer shall be inoperative. A disclaimer shall be in the Form No. 35 and a notice of disclaimer in the Form No. 36 in the Appendix with such variations as circumstances may require.

(3) Where any person claims to be interested in any part of the property of a Company which the liquidator wishes to disclaim he shall at the request of the liquidator furnish a statement of the interest so claimed by him.

NOTES.—Section 267 (1). See now section 323 (1), *ante*.

Form No. 35. Disclaimer.

Form No. 36. Notice of disclaimer of lease.

VESTING OF DISCLAIMED PROPERTY

74. Vesting of Disclaimed Property.—(1) Any application under subsection (6) of section 267 of the Act for an order for the vesting of any disclaimed property in or the delivery of any such property to any persons shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid relates to disclaimed property of a leasehold nature and it appears that there is any mortgagee by demise (including a chargee by way of legal mortgage), or under-lessee of such property the Court may direct that notice shall be given to such mortgagee or under-lessee that if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by the above-mentioned subsection and imposed by the Court within a time to be fixed by the Court and stated in the notice he will be excluded from all interest in and security upon the property and the Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and if he sees fit to make such election and application as is mentioned in the notice. If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

NOTE.—Section 267 (6). See now section 323 (6), *ante*.

ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN A
WINDING-UP BY THE COURT

75. Report by Official Receiver on arrangements and compromises.

—In a winding-up by the Court if application is made to the Court to sanction any compromise or arrangement the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the Company, and as to any other matters which, in the opinion of the Official Receiver or the Board of Trade, ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct it to be filed.

COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP
BY THE COURT

76. Collection and distribution of Company's assets by Liquidator.

—(1) The duties imposed on the Court by section 203 (1) of the Act, in a winding-up by the Court with regard to the collection of the assets of the Company, and the application of the assets in discharge of the Company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court.

(2) For the purpose of the discharge by the Liquidator of the duties imposed by section 203 (1) of the Act, and paragraph (1) of this Rule, the Liquidator in a winding-up by the Court shall for the purpose of acquiring or retaining possession of the property of the Company, be in the same position as if he were a Receiver of the property appointed by the High Court, and the Court may, on his application enforce such acquisition or retention accordingly.

NOTE.—Section 203 (1). See now section 257 (1), *ante*.

77. Power of Liquidator to require delivery of property.—The powers conferred on the Court by section 204 of the Act shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a Company which is being wound up under order of the Court shall, on notice from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any money, property, books or papers, which happen to be in his hands for the time being and to which the Company is *prima facie* entitled.

NOTES.—Section 204. See now section 258, *ante*.

The Form is No. 37 (notice by liquidator requiring payment of money or delivery of books, &c., to liquidator).

LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT

78. Liquidator to settle list of contributories.—Unless the Court shall dispense with the settlement of a list of contributories the Liquidator shall with all convenient speed after his appointment settle a list of contributories of the Company, and shall appoint a time and place for the purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest and shall distinguish the several classes of contributories. As regards representative contributories the Liquidator shall, so far as practicable, observe the requirements of section 203 (2) of the Act.

NOTES.—The Form is No. 38 (provisional list of contributories to be made out by liquidator).

Section 203 (2). See now section 257, *ante*.

79. Appointment of time and place for settlement of list.—The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been called up and what amount paid up in respect of such shares or interest.

NOTE.—The Forms are Nos. 39 (notice to contributories of appointment to settle list of contributories), and 40 (affidavit of postage of notices to settle list of contributories).

80. Settlement of list of contributories.—On the day appointed for settlement of the list of contributories the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the Company.

NOTE.—The Form is No. 41 (certificate of liquidator of final settlement of the list of contributories).

81. Notice to contributories.—The Liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

NOTE.—The Forms are Nos. 42 (notice to contributories of final settlement of list of contributories and that his name is included), and 43 (affidavit of service of notice to contributory).

82. Application to the Court to vary the list.—(1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of 21 days from the date of the service on such person of notice of the settlement of the list.

(2) The Official Receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a Company.

NOTE.—The Form is No. 44 (order of application to vary list of contributories)

83. Variation of or addition to list of contributories.—The Liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

NOTE.—The Form is No. 45 (supplemental list of contributories).

CALLS

84. Calls by Liquidator.—The powers and duties of the Court in relation to making calls upon contributories conferred by section 206 of the Act, shall and may be exercised, in a winding-up by the Court, by the Liquidator as an officer of the Court subject to the proviso to section 220 of the Act, and to the following regulations :—

- (1) Where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a Committee of Inspection he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call.
- (2) The notice of the meeting shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised once at least in a London newspaper, or, where the winding-up is not in the High Court, in a newspaper circulating in the district of the Court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the Liquidator or members of the Committee of Inspection to be laid before the meeting, in reference to the said intended call.
- (3) At the meeting of the Committee of Inspection any statements or representations made either to the meeting personally or addressed in

writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned.

(4) The sanction of the Committee shall be given by resolution, which shall be passed by a majority of the members present.

(5) Where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

NOTES.—Section 206. See now section 260, *ante*.

Section 220.—See now section 273, *ante*.

Rule 84 (2). The Forms are Nos. 46 (notice to each member of committee of inspection of meeting for sanction to proposed call), and 47 (advertisement of meeting of committee of inspection to sanction proposed call).

Rule 84 (4). The Form is No. 48 (resolution of committee of inspection sanctioning call).

85. Application to the Court for leave to make a call.—In a winding-up by the Court an application to the Court for leave to make any call on the contributories of a Company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, which summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

NOTE.—The Forms are Nos. 49 (summons for leave to make call), and 52 (order giving leave to make a call).

86. Document making the call.—When the Liquidator is authorised by resolution or order to make a call on the contributories he shall file with the Registrar a document in the Form 53 with such variations as such circumstances may require making the call.

NOTE.—The Form is No. 53 (document making a call).

87. Service of notice of a call.—When a call has been made by the Liquidator in a winding-up by the Court, a copy of the resolution of the Committee of Inspection or order of the Court (if any), as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

NOTE.—The Forms are Nos. 48 (resolution of committee of inspection sanctioning call), 52 (order giving leave to make call), 54 (notice of call sanctioned by committee of inspection to be sent to contributories), and 55 (notice to be served with the order sanctioning a call).

88. Enforcement of call.—The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the Liquidator.

NOTE.—The Forms are Nos. 56 (affidavit in support of application for order for payment of call), 57 (order for payment of call due from contributory), and 58 (affidavit of service of payment of call).

PROOFS

89. Proof of debt.—In a winding-up by the Court every creditor shall subject as hereinafter provided prove his debt, unless the Judge in any particular winding-up shall give directions that any creditors or class of creditors shall be admitted without proof.

NOTE.—The Form is No. 59 (Proof of Debt, General Form); it was amended by the Companies (Winding-Up) Amendment Rules, 1931, S.R. & O. 1931 No. 70, by deleting the words "Signature of Commissioner or Officer administering oath." The amending rules came into operation on April 14, 1931.

90. Mode of proof.—A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the Official Receiver or if a Liquidator has been appointed, to the Liquidator; and in any other winding-up the affidavit may be so sent to the Liquidator.

NOTE.—The Form is No. 59 (see note to rule 89).

91. Verification of proof.—An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

NOTE.—The Form is No. 59 (see note to rule 89).

92. Contents of proof.—An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers if any, by which the same can be substantiated. The Official Receiver or Liquidator to whom the proof is sent may at any time call for the production of the vouchers.

NOTE.—The Form is No. 59 (see note to rule 89).

93. Statement of security.—An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

NOTE.—The Form is No. 59 (see note to rule 89).

94. Proof before whom sworn.—An affidavit proving a debt may in a winding-up by the Court be sworn before an Official Receiver, or Assistant Official Receiver, or any Officer of the Board of Trade or any Clerk of an Official Receiver duly authorised in writing by the Court or the Board of Trade in that behalf.

NOTE.—The Form is No. 59 (see note to rule 89).

95. Costs of proof.—A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

96. Discount.—A creditor proving his debt shall deduct therefrom (a) any discount which he may have agreed to allow for payment in cash in excess of five per centum on the net amount of his claim and (b) all trade discounts.

97. Periodical payments.—When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the Liquidator remains in occupation of premises demised to a Company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the Company, or the Liquidator, of rent during the period of the Company's or the Liquidator's occupation.

98. Interest.—On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding-up, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

99. Proof for debt payable at a future time.—A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

100. Proof under section 264.—Unless the Official Receiver or Liquidator shall in any special case otherwise direct formal proof of the debts mentioned in paragraph (e) of subsection (1) of section 264 of the Act shall not be required.

NOTE.—Section 264. See now section 319, *ante*.

101. Workmen's wages.—In any case in which it appears that there are numerous claims for wages by workmen and others employed by the Company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have

annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

NOTE.—The Form is No. 60 (proof of debt of workman). As to changes in the period to which preferential payments apply, see sections 319, 358, *ante*.

102. Production of bills of exchange and promissory notes.—Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the Company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, Chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

103. Transmission of proofs to Liquidator.—Where a Liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

ADMISSION AND REJECTION OF PROOFS AND PREFERENTIAL CLAIMS AND APPEAL TO THE COURT

104. Notice to Creditors to prove.—(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the Company are to prove their debts or claims, and to establish any title they may have to priority under section 264 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or as the case may be from objecting to such distribution.

(2) The Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the Court to every person mentioned in the Statement of Affairs as a creditor, and who has not proved his debt, and to every person mentioned in the Statement of Affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the Liquidator, claims to be a creditor or preferential creditor of the Company and whose claim has not been admitted.

(3) All the Rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.

NOTE.—Section 264. See now section 319, *ante*

105. Examination of proof.—The Liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

NOTE.—The Form is No. 61 (notice of rejection of proof of debt).

106. Appeal by creditor.—If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding-up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection.

107. Expunging at instance of Liquidator.—If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

108. Expunging at instance of creditor.—The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter.

109. Oaths.—For the purpose of any of his duties in relation to proofs, the Liquidator, in a winding-up by the Court, may administer oaths and take affidavits.

110. Official Receiver's powers.—In a winding-up by the Court the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

111. Filing proofs by Official Receiver.—In a winding-up by the Court the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

112. Proofs to be filed.—Every liquidator in a winding-up by the Court other than the Official Receiver shall on the first day of every month, file with the Registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar.

NOTE.—The Form is No. 62 (list of proofs to be filed).

113. Procedure where creditor appeals.—The Liquidator in a winding-up by the Court, including the Official Receiver when he is Liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof.

114. Time for dealing with proofs by Official Receiver.—Subject to the power of the Court to extend the time in a winding-up by the Court, the Official Receiver as Liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

115. Time for dealing with proofs by Liquidator.—Subject to the power of the Court to extend the time, the Liquidator in a winding-up by the Court, other than the Official Receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with shall in writing either admit or reject it wholly or in part, or require further evidence in support of it: Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence of support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

116. Cost of appeals from decisions as to proofs.—The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

DIVIDENDS IN A WINDING-UP BY THE COURT

117. Dividends to creditors.—(1) Not more than two months before declaring a dividend the Liquidator in a winding-up by the Court, shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall,

subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this Rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the Liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary in the opinion of the Liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend the Liquidator shall forthwith transmit to the Board of Trade a list of the proofs filed with the Registrar under Rule 112, which list shall be in the Form 66 or 67 in the Appendix as the case may be. If the winding-up is in a Court other than the High Court the list shall on payment of the prescribed fee, be examined by the Registrar, with the proofs tendered for filing and if found correct shall be certified by the Registrar. If the winding-up is in the High Court the Liquidator shall, if so required by the Board of Trade, transmit to the Board of Trade, office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

(6) Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the Liquidator a document in the Form 68 which shall be a sufficient authority for payment of the dividend to the person therein named.

NOTE.—The Forms are Nos. 63 (notice to creditors of intention to declare dividend), 64 (notice to persons claiming to be creditors of intention to declare final dividend), 65 (notice of dividend), 66 (certified list of proofs, &c.), 67 (do., special bank case), 68 (authority to liquidator to pay dividend to another person), 103 (4) (notice of intended dividend in Gazette), 103 (5) (notice of dividend in Gazette).

118. Return of capital to contributories.—Every order by which the Liquidator in a winding-up by the Court is authorised to make a return to contributories of the Company shall, unless the Court shall otherwise direct, contain or have appended thereto a Schedule or List (which the Liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made. The Schedule or list shall be in the Form 70 with such variations as circumstances shall require, and the Liquidator shall send a notice of return to each contributory.

NOTE.—The notice of return to contributories is Form No. 69. The form of notice in the Gazette is No. 103 (6).

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO A WINDING-UP BY THE COURT

119. First meetings of creditors and contributories.—Unless the Court otherwise directs, the meetings of creditors and contributories under section 185 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or if a Special Manager has been appointed then within six weeks after the date of the Winding-up Order. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

NOTE.—Section 185. See now section 239, *ante*.

120. Notice of first meetings to Board of Trade.—The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same.

NOTE.—The Form is No. 103 (2) (notice of first meetings).

121. Summoning of first meetings.—The first meetings of creditors and contributories shall be summoned as hereinafter provided.

122. Form of notices of first meetings.—The notices of first meetings of creditors and contributories may be in Forms 71 and 72 appended thereto, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

123. Notice of first meeting to officers of company.—The Official Receiver shall also give to each of the Directors and other Officers of the Company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every Director or Officer who receives notice of such meeting to attend if so required by the Official Receiver, and if any such Director or Officer fails to attend the Official Receiver shall report such failure to the Court.

NOTE.—The Form is No. 73 (notice to directors and officers to attend first meeting of creditors and contributories).

124. Summary of statement of affairs.—(1) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the Company's Statement of Affairs, and to each person appearing from the Company's books or otherwise to be a contributory of the Company a summary of the Company's Statement of Affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

(2) Where prior to the winding-up order the company has commenced to be wound up voluntarily the Official Receiver may if in his absolute discretion he sees fit so to do send to the persons aforesaid or any of them an account of such voluntary winding-up showing how such winding-up has been conducted and how the property of the Company has been disposed of and any observations which the Official Receiver may think fit to make on such account or on the voluntary winding-up.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO WINDING-UP BY THE COURT AND OF CREDITORS IN RELATION TO A CREDITORS' VOLUNTARY WINDING-UP

125. Liquidator's meetings of creditors and contributories.—(1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 288 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the Liquidator in any winding-up by the Court may himself from time to time subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as Liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up.

(2) In any creditors voluntary winding-up the Liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding-up (such meetings and all meetings of creditors which a Liquidator or a Company is by the Act required to convene in or immediately before such a voluntary winding-up and all meetings convened by a creditor in a voluntary winding-up under these Rules are hereinafter called voluntary liquidation meetings).

NOTE.—Section 288. See now section 346, *ante*.

126. Application of rules as to meetings.—Except where and so far as the nature of the subject-matter or the context may otherwise require the Rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, Liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so nevertheless that the said Rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings subject and without prejudice to any express directions of the Court.

127. Summoning of meetings.—(1) The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the Company's books to be a creditor of the Company notice of the meeting of creditors, and to every person appearing by the Company's books or otherwise to be a contributory of the Company notice of the meeting of contributories.

(2) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the Statement of Affairs of the Company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the Company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under section 242 of the Act the continuing Liquidator or if there is no continuing Liquidator any creditor may summon the meeting.

(4) This Rule shall not apply to meetings under section 238 or section 245 of the Act.

NOTES.—The Form is No. 75 (notice of meeting—general form).

Section 238. See now section 293, *ante*.

Section 242. See now section 297, *ante*.

Section 245. See now section 300, *ante*.

128. Proof of notice.—A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or creditor, or his solicitor, or the clerk of either of such persons, or as the case may be by some officer of the Company or its solicitor or the clerk of such Company or solicitor, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

NOTE.—The Forms are Nos. 76 (affidavit of postage of notice of meetings), 77 (certificates of postage of notice of meetings).

129. Place of meetings.—Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

130. Costs of calling meeting.—The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or Liquidator (as the case may be) such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the Company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This Rule shall not apply to meetings under sections 238 or 242 of the Act.

NOTE.—Sections 238, 242. See now sections 293, 297, *ante*.

131. Chairman of meeting.—Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him shall be Chairman of the meeting. At every other meeting of creditors or contributories the Chairman shall be such person as the meeting by resolution shall appoint. This Rule shall not apply to meetings under section 238 of the Act.

NOTES.—The Form is No. 78 (authority to deputy to act as chairman of meetings and use proxies).

Section 238. See now section 293, *ante*.

132. Ordinary resolution of creditors and contributories.—At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the Company.

133. Copy of resolution to be filed.—The Official Receiver or as the case may be the Liquidator shall file with the Registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding-up by the Court.

134. Non-reception of notice by a creditor.—Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

135. Adjournments.—The Chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

NOTE.—The Form is No. 79 (memorandum of adjournment of meeting).

136. Quorum.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint but so that the day appointed shall be not less than seven or more than twenty-one days from the day from which the meeting was adjourned.

137. Creditors entitled to vote.—In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the Company. In the case of a Court meeting or Liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the Company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors. This Rule shall not apply to any creditors or class of creditors who by virtue of the Rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting.

138. Cases in which creditors may not vote.—A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of

which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the Company, and against whom a Receiving Order in Bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

139. Votes of secured creditors.—For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

140. Creditor required to give up security.—The Official Receiver or Liquidator may within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

141. Admission and rejection of proofs for purpose of voting.—The Chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

142. Statement of Security.—For the purpose of voting at any voluntary liquidation meetings a secured creditor shall unless he surrender his security lodge with the Liquidator or where there is no Liquidator at the Registered Office of the Company before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

143. Minutes of meeting.—(1) The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the Chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 74.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT AND TO MEETINGS OF CREDITORS IN A CREDITORS' VOLUNTARY WINDING-UP

144. Proxies.—A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 116 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other the Chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding Rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

NOTE.—Section 116. See now section 139, *ante*.

145. Form of proxies.—Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a Commissioner to administer oaths in the Supreme Court.

NOTE.—The Forms are Nos. 80 (general proxy), and 81 (special proxy).

146. Forms of proxy to be sent with notices.—General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

147. General proxies.—A creditor or a contributory may give a general proxy to any person.

148. Special proxies.—A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof :—

- (a) for or against the appointment or continuance in office of any specified person as Liquidator or Member of the Committee of Inspection, and ;
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

149. Solicitation by Liquidator to obtain proxies.—Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

150. Proxies to Official Receiver or Liquidator.—A creditor or a contributory in a winding-up by the Court may appoint the Official Receiver or Liquidator and in a voluntary winding-up the Liquidator or if there is no Liquidator the Chairman of a meeting to act as his general or special proxy.

151. Holder of proxy not to vote on matter in which he is financially interested.—No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the Company otherwise than as a creditor rateably with the other creditors of the Company : Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator he may use the said proxies and vote accordingly.

152. Proxies.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case a proxy shall be lodged with the Official Receiver or Liquidator in a winding-up by the Court, with the Company at its Registered Office for a meeting under section 238 of the Act, and with the Liquidator or if there is no Liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding-up not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

NOTES.—The Forms are Nos. 80 (general proxy), and 81 (special proxy).
Section 238. See now section 293, *ante*.

153. Use of proxies by deputy.—Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

154. Filling in where creditor blind or incapable.—The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence ; provided that all insertions in the proxy are in the handwriting of the witness and such witness shall have

certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the creditor before he attached his signature or mark.

ATTENDANCE AND APPEARANCE OF PARTIES

155. Attendance at proceedings.—(1) Every person for the time being on the list of contributories of the Company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the Company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the Company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this Rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in Chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

156. Attendance of Liquidator's Solicitor.—Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or Chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

LIQUIDATOR AND COMMITTEE OF INSPECTION

157. Remuneration of Liquidator.—(1) The remuneration of a Liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If the Board of Trade are of opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection is unnecessarily large, the Board of Trade may apply to the Court, and thereupon the Court shall fix the amount of the remuneration of the Liquidator.

(3) If there is no Committee of Inspection the remuneration of the Liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the Official Receiver as Liquidator.

(4) This Rule shall only apply to a Liquidator appointed in a winding-up by the Court.

158. Limit of remuneration.—Except as provided by the Act or the Rules, a Liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the Company of which he is Liquidator, or who is employed in or in connection with the winding-up of the Company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and the Rules he is entitled as Liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person.

159. Dealings with assets.—Neither the Liquidator, nor any member of the Committee of Inspection of a Company shall, while acting as Liquidator or member of such committee, except by leave of the Court, either directly or

indirectly, by himself or any employer, partner, clerk, agent, or servant, become purchaser of any part of the Company's assets. Any such purchase made contrary to the provisions of this Rule may be set aside by the Court on the application of the Board of Trade in a winding-up by the Court or of any creditor or contributory in any winding-up, and the Court may make such order as to costs as the Court shall think fit.

160. Restriction on purchase of goods by Liquidator.—Where the Liquidator carries on the business of the Company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

161. Committee of Inspection not to make profit.—No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself, or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the Company. In a winding-up by the Court if it appears to the Board of Trade or in a voluntary winding-up if it appears to the committee of inspection or to any meeting of creditors or contributories that any profit or payment has been made contrary to the provisions of this Rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the Liquidator's accounts or otherwise.

162. Costs of obtaining sanction of Court.—In any case in which the sanction of the Court is obtained under the two last preceding Rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the Company's assets.

163. Sanction of payments to Committee.—Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the Company's assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court no remuneration shall, under any circumstances, be paid to a member of a Committee for services rendered by him in the discharge of the duties attaching to his office as a member of such Committee.

164. Discharge of costs before assets handed to Liquidator.—
(1) Where a Liquidator is appointed by the Court, and has notified his appointment to the Registrar of Companies, and given security to the Board of Trade, the Official Receiver shall forthwith put the Liquidator into possession of all property of the Company of which the Official Receiver may have custody; provided that such Liquidator shall have, before the assets are handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the Company, together with interest on such advances at the rate of four pounds per centum per annum; and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the Company, and whether incurred before or after he has been put into such possession.

(2) The Official Receiver shall be deemed to have a lien upon the Company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator all such information respecting the estate and affairs of the Company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

(4) This and the next following Rule shall only apply in a winding-up by the Court.

165. Resignation of Liquidator.—A Liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the Company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the Liquidator, he shall file with the Registrar a memorandum of his resignation; and shall send notice thereof to the Official Receiver, and the resignation shall thereupon take effect. In any other case the Liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the Liquidator or the Official Receiver, determine whether or not the resignation of the Liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

166. Office of Liquidator vacated by his insolvency.—If a Receiving Order in Bankruptcy is made against a Liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and Rules shall be deemed to have been removed.

PAYMENTS INTO AND OUT OF A BANK

167. Payments out of Bank of England.—All payments out of the Companies Liquidation Account shall be made in such manner as the Board of Trade may from time to time direct.

168. Special Bank account.—(1) Where the Liquidator in a winding-up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the Company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the Company, and shall be signed by the Liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

(2) Where application is made to the Board of Trade to authorise the Liquidator in a winding-up by the Court to make his payments into and out of a special bank account, the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

NOTES.—The Forms are Nos. 82 (application to Board of Trade to authorise a special bank account), and 83 (order of Board of Trade for special bank account).

Books

169. Record Book.—In a winding-up by the Court the Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the Company's affairs; but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, the Official Receiver, or the Board of Trade.

170. Cash Book.—In a winding-up by the Court the Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct) in which he shall (subject to the provisions of the Rules as to trading accounts) enter from day to day the receipts and payments made by him.

(2) In a winding-up by the Court a Liquidator other than the Official Receiver shall submit the Record Book and Cash Book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

(3) In a creditors voluntary winding-up the Liquidator shall keep such books as the Committee of Inspection or if there is no such Committee as the creditors direct and all books kept by the Liquidator shall be submitted to the

Committee of Inspection or if there is no such Committee to the creditors with any other books documents papers and accounts in his possession relating to his office as Liquidator or to the company as and when the Committee of Inspection or if there is no such Committee the creditors direct.

INVESTMENT OF FUNDS

171. Investment of assets in securities and realisation of securities.

—(1) Where in a winding-up by the Court or in a creditors voluntary winding-up the Committee of Inspection are of opinion that any part of the cash balance standing to the credit of the account of the Company should be invested, they shall sign a certificate and request, and the Liquidator shall transmit such certificate and request to the Board of Trade.

(2) Where the Committee of Inspection in any such winding-up are of opinion that it is advisable to sell any of the securities in which the moneys of the Company's assets are invested they shall sign a certificate and request to that effect, and the Liquidator shall transmit such certificate and request to the Board of Trade.

(3) Where there is no Committee of Inspection in any such winding-up as is mentioned in paragraphs (1) and (2) of this Rule and in every member's voluntary winding-up whether under the supervision of the Court or not, if a case has in the opinion of the Liquidator arisen under section 302 of the Act for an investment of funds of the Company or a sale of securities in which the Company's funds have been invested, the Liquidator shall sign and transmit to the Board of Trade a certificate of the facts on which his opinion is founded, and a request to the Board of Trade to make the investment or sale mentioned in the certificate, and the Board of Trade may thereupon, if they think fit, invest or sell the whole or any part of the said funds and securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

NOTES.—The Forms are Nos. 84 (certificate and request by committee of inspection as to investment of funds), and 85 (request by committee of inspection to Board of Trade to sell securities).

Section 302. See now section 362, *ante*.

ACCOUNTS AND AUDIT IN A WINDING-UP BY THE COURT*

172. Audit of Cash Book.—The Committee of Inspection shall not less than once every three months audit the Liquidator's Cash Book and certify therein under their hands the day on which the said book was audited.

NOTE.—The Form is No. 86 (certificate by committee of inspection as to audit of liquidator's accounts).

173. Board of Trade audit of Liquidator's accounts.—(1) The Liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection. He shall also forward with the first accounts, a summary of the Company's statement of affairs, showing thereon the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The Liquidator shall also at the end of every six months forward to the Board of Trade, with his Accounts, a report upon the position of the liquidation of the Company in such form as the Board of Trade may direct.

(2) When the assets of the Company have been fully realised and distributed the Liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

(3) The accounts sent in by the Liquidator shall be verified by him by affidavit.

NOTE.—The Form is No. 87 (affidavit verifying liquidator's accounts).

174. Liquidator carrying on business.—(1) Where the Liquidator carries on the business of the Company, he shall keep a distinct account of the trading, and shall incorporate in the Cash Book the total weekly amounts of the receipts and payments on such trading account.

* See now section 249, *ante*, which incorporates certain amendments to section 195 of the 1929 Act, effected by sections 97 (4), 97 (5) of the 1947 Act.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Committee of Inspection (if any), or such member thereof as may be appointed by the Committee for that purpose, who shall examine and certify the same.

NOTE.—The Forms are Nos. 88 (liquidator's trading account), and 89 (affidavit verifying liquidator's trading account).

175. Copy of accounts to be filed.—When the Liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the Registrar.

176. Summary of accounts.—(1) The Liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade may from time to time direct, and on the approval of such summary by the Board of Trade shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the Company.

NOTE.—The duty of sending the accounts to every creditor and contributory is now the liquidator's and not the Board of Trade's (see section 249 (5), *ante*).

177. Affidavit of no receipts.—Where a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the Company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments.

178. Proceedings on resignation, &c., of Liquidator.—(1) Upon a Liquidator resigning or being released or removed from his office, he shall deliver over to the Official Receiver, or as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of Liquidator. The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver, or as the case may be to the new Liquidator, all the books, papers, documents, and accounts which he is by this Rule required to deliver on his release.

Disposal of books.—(2) The Board of Trade may, at any time during the progress of the liquidation, on the application of the Liquidator or the Official Receiver, direct that such of the books, papers, and documents of the Company, or of the Liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

179. Expenses of sales.—Where property forming part of a Company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every Liquidator by whom such auctioneer or agent is employed, shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

TAXATION OF COSTS

180. Taxation of costs payable by or to Official Receiver or Liquidator or by Company.—Every solicitor, manager, accountant, auctioneer, broker or other person employed by an Official Receiver or Liquidator in a winding-up by the Court shall on request by the Official Receiver or Liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the Official Receiver or Liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the Liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the Official Receiver or Liquidator shall be in Form No. 90.

181. Notice of appointment.—Where a bill of costs or charges in any winding-up has been lodged with the Taxing Officer, he shall give notice of an appointment to tax the same, in a winding-up by the Court to the Official Receiver, and in every winding-up to the Liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be).

182. Lodgement of Bill.—The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a Liquidator, shall be lodged with the Official Receiver, and if incurred after the appointment of a Liquidator, shall be lodged with the Liquidator. The Official Receiver or the Liquidator, as the case may be, shall lodge the bill or charges with the proper Taxing Officer.

183. Copy of the Bill to be furnished.—Every person whose bill or charges in a winding-up by the Court is or are to be taxed shall, on application either of the Official Receiver or the Liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 4d. per folio, which payment shall be charged on the assets of the Company. The Official Receiver shall call the attention of the Liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

184. Applications for costs.—Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding :—

- (1) Such party or person shall serve notice of his intended application on the Official Receiver or on the Liquidator as the case may be.
- (2) The Official Receiver or Liquidator may appear on such application and object thereto.
- (3) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

185. Certificate of taxation.—Upon the taxation of any bill of costs, charges, or expenses being completed, the Taxing Officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges, and expenses, together with the allowance or certificate, shall be filed with the Registrar.

NOTE.—The Form is No. 91 (certificate of taxation).

186. Certificate of employment.—Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or Liquidator, is or are payable out of the assets of the Company, a certificate in writing, signed by the Official Receiver or Liquidator, as the case may be, shall on the taxation be produced to the Taxing Officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the appointment of a solicitor to assist the Liquidator in the performance of his duties and the instructions given to such solicitor by the Liquidator.

187. Sheriff's costs.—In any case in which pursuant to section 269 (1) of the Act a sheriff is required to deliver goods or money to a Liquidator such sheriff shall without delay bring in his bill of costs for taxation and they shall be taxed by the Taxing Officer and unless such bill of costs is brought in for taxation within one month from the date when the sheriff makes such delivery the Liquidator may decline to pay the same.

NOTE.—Section 269. See now section 326, *ante*.

188. Taxation of sheriff's costs after deduction.—If a Liquidator shall in writing require any costs which a sheriff has deducted under section 269 (2) of the Act to be taxed the sheriff shall within seven days from the date of the request bring in such costs for taxation and they shall be taxed by the Taxing Officer and any amount disallowed on such taxation shall forthwith be paid over by the sheriff to the Liquidator.

NOTE.—Section 269. See now section 326, *ante*.

189. Scale of costs in a County Court, and taxation.—In a County Court all costs properly incurred in a winding-up by the Court shall be allowed on the Lower Scale in Appendix N. to the Rules of the Supreme Court, as increased by Order 65, [Rule 10] [[and Rule 10A]] of the said Rules, and costs shall be taxed by the Registrar in person.

NOTES.—The words between single square brackets were substituted for "Rule 10B" by the Companies (Winding-Up) Amendment (No. 1) Rules, 1932, S.R. & O. 1932 No. 802, which came into operation on October 1, 1932.

The words between double square brackets were inserted by the Companies (Winding-Up) Amendment (No. 1) Rules, 1944, S.R. & O. 1944 No. 655, as from June 1, 1944.

190. Review of taxation at instance of Board of Trade.—(1) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the Company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a Registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by the Taxing Officer of the High Court.

(2) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the Taxing Officer of the High Court to appoint a time for the review of such taxation and thereupon such Taxing Officer shall appoint a time for the review of, and shall review, such taxation and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3) Where any such review of taxation as is above mentioned is required to be made by the Taxing Officer of the High Court, the Registrar whose taxation is to be reviewed shall forward to the said Taxing Officer the bill which is required to be reviewed.

(4) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the Official Receiver or the Liquidator, or other person entitled thereto. The certificate of the Taxing Officer shall in every case of a review by him under this Rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) The costs of and incidental to the review shall be paid out of the assets of the Company or otherwise as the Taxing Officer or the Court may direct; provided that the cost of the attendance of a principal shall not be allowed if in the opinion of the Taxing Officer he could have been sufficiently represented by his London agent.

COSTS AND EXPENSES PAYABLE OUT OF THE ASSETS OF THE COMPANY

191. Liquidator's charges.—(1) Where a Liquidator or Special Manager in a winding-up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or Rules to be performed by himself.

(2) Where a Liquidator is a solicitor he may contract that the remuneration for his services as Liquidator shall include all professional services.

192. Costs payable out of the assets.—(1) The assets of a Company in a winding-up by the Court, remaining after payment of the fees and expenses properly incurred in preserving realising or getting in the assets, including where the Company has previously commenced to be wound up Voluntarily such remuneration, costs, and expenses as the Court may allow to a Liquidator appointed in such Voluntary Winding-up shall, subject to any order of the Court, and, as regards a winding-up to which the provisions of the Stannaries Act, 1887, apply, subject to that Act as modified by the Act, be liable to the following payments, which shall be made in the following order of priority, namely:—

First.—The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Next.—The remuneration of the special manager (if any).

Next.—The costs and expenses of any person who makes or concurs in making, the Company's statement of affairs.

Next.—The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is appointed at the instance of the Official Receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the Company.

Next.—The necessary disbursements of any Liquidator appointed in the winding-up by the Court, other than expenses properly incurred in preserving realising or getting in the assets heretofore provided for.

Next.—The costs of any person properly employed by any such Liquidator.

Next.—The remuneration of any such Liquidator.

Next.—The actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Board of Trade.

Costs.—(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons other than payments for costs and expenses incurred and sanctioned under Rule 54, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the Registrar. The Taxing Officer shall before passing the bills or charges of a solicitor satisfy himself that the appointment of a solicitor to assist the Liquidator in the performance of his duties has been duly sanctioned: Provided that the Official Receiver when acting as Liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of £2: provided always that the Board of Trade may require such costs or charges to be taxed by the Taxing Officer.

(3) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against a Company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a Judge thereof to be paid by the Company or the Liquidator, or the rights of the person to whom such costs are payable.

STATEMENTS BY LIQUIDATOR TO THE REGISTRAR OF COMPANIES*

193. Conclusion of winding-up.—The winding-up of a Company shall, for the purposes of section 284 of the Act, be deemed to be concluded:—

- (a) In the case of a Company wound up by order of the Court, at the date on which the order dissolving the Company has been reported by the Liquidator to the Registrar of Companies, or at the date of the order of the Board of Trade releasing the Liquidator pursuant to section 197 of the Act.
- (b) In the case of a Company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the Company, unless at such date any funds or assets of the Company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England.

NOTE.—Section 284. See now section 342, *ante*.

194. Times for sending Liquidator's statements, and regulations applicable thereto.—In a voluntary winding-up or a winding-up under the supervision of the Court the statements with respect to the proceedings in and position of a liquidation of a Company, the winding-up of which is not concluded within a year after its commencement, shall be sent to the Registrar of Companies twice in every year as follows:—

- (1) The first statement commencing at the date when a Liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction, and the subsequent

* As to inspection of statements filed by the liquidator, see section 342, *ante*.

statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent. In cases in which the assets of the Company have been fully realised and distributed before the expiration of a half-yearly interval a final statement shall be sent forthwith.

- (2) Subject to the next succeeding Rule, Form No. 92, and where applicable Forms 94, 95 and 96, with such variations as circumstances may require, shall be used, and the directions specified in the Form (unless the Board of Trade otherwise direct) be observed in reference to every statement.
- (3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require.

195. Affidavit of no receipts or payments.—Where in a voluntary winding-up or a winding-up under the supervision of the Court a Liquidator has not during any period for which a statement has to be sent received or paid any money on account of the Company, he shall at the period when he is required to transmit his statement, send to the Registrar of Companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the Liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93.

UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN THE HANDS OF A LIQUIDATOR

196. Payment of undistributed and unclaimed money into Companies Liquidation Account.—(1) All money in the hands or under the control of a Liquidator of a Company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the Liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

(2) In a voluntary winding-up or a winding-up under the supervision of the Court all other money in the hands or under the control of a Liquidator of a Company, representing unclaimed or undistributed assets, which under subsection (1) of section 285 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this Rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the Liquidator at the date of the dissolution of the Company shall forthwith be paid by him into the Companies Liquidation Account.

(4) A Liquidator whose duty it is to pay into the Companies Liquidation Account at the Bank of England, money representing unclaimed or undistributed assets of the Company shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

(5) In a voluntary winding-up or a winding-up under the supervision of the Court money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the Companies Liquidation Account pursuant to paragraph (2) of this Rule, the Liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account, provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account. In the latter

case, if and when the money represented by the securities is required wholly or in part for the purposes of the Liquidation, the Board of Trade may realise the securities wholly or in part and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other monies paid into the said Account may be dealt with.

NOTE.—Section 285. See now section 343, *ante*.

197. Liquidator to furnish information to Board of Trade.—In a voluntary winding-up or a winding-up under the supervision of the Court every person who has acted as Liquidator of any Company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the Company and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

NOTE.—The Form is No. 97 (affidavit verifying account of unclaimed and undistributed funds).

198. Board of Trade may call for verified accounts.—(1) In a voluntary winding-up or a winding-up under the supervision of the Court the Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as Liquidator of the Company and may direct and enforce an audit of the account.

(2) For the purposes of section 285 of the Act, and the Rules, the Court has and may exercise all the powers conferred by the Bankruptcy Act, 1914, with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 285 of the Act.

NOTES.—The Forms are Nos. 92 to 96, as to which, see rule 194.

Section 285. See now section 343, *ante*.

199. Application to the Court for enforcing an account, and getting in money.—An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 285 of the Act, shall be made by motion, and where the winding-up is by or under the supervision of the Court shall be made to and dealt with by the Judge, and in a voluntary winding-up shall be made to and dealt with by the Judge of the High Court.

NOTE.—Section 285. See now section 343, *ante*.

200. Application for payment out by person entitled.—An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 285 of the Act, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct.

NOTE.—Section 285. See now section 343, *ante*.

201. Application by Liquidator for payment out.—A Liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 285 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the Liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

NOTE.—Section 285. See now section 343, *ante*.

RELEASE OF LIQUIDATOR IN A WINDING-UP BY THE COURT

202. Proceedings for release of Liquidator.—(1) A Liquidator in a winding-up by the Court before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have

proved their debts, and to all the contributories, and shall send with the notice a summary of all receipts and payments in the winding-up.

(2) When the Board of Trade have granted to a Liquidator his release, a notice of the order granting the release shall be gazetted. The Liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the Company's assets.

NOTE.—The Forms are Nos. 98 (notice to creditors and contributories of intention to apply for release), 99 (application by liquidator to Board of Trade for release), 100 (statement to accompany notice of application for release), and 103 (9) (notice of release in *Gazette*).

203. Disposal of books and papers.—(1) The Board of Trade may order that the books and papers of a Company which has been wound up shall not be destroyed for such period (not exceeding five years from the dissolution of the Company) as the Board thinks proper.

(2) Any creditor or contributory may make representations to the Board with regard to the destruction of such books and papers and may appeal to the Court from any order made by the Board under this Rule.

(3) Subject to any order of the Court the Board of Trade may by a further order vary or rescind any order made by it under this Rule.

(4) A resolution for the destruction of the books and papers of such a Company within the said period of five years or any shorter period fixed by an order of the Board in force at the date of such resolution shall not take effect until the expiration of such period of five years or of such shorter period unless the Board shall otherwise direct.

(5) At least one week's notice shall be given to the Board of Trade of any application to the Court for an order for the destruction of the books and papers of a Company before the expiration of such period of five years or shorter period.

OFFICIAL RECEIVERS AND BOARD OF TRADE

204. Appointment.—(1) Judicial notice shall be taken of the appointment of the Official Receivers appointed by the Board of Trade.

(2) When the Board of Trade appoint any officer to act as deputy for or in the place of an Official Receiver, notice thereof shall be given by letter to the Court to which such Official Receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an Official Receiver.

205. Removal.—Where an Official Receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the Official Receiver was attached.

206. Personal performance of duties.—The Board of Trade may, by general or special directions, determine what acts or duties of the Official Receiver in relation to the winding-up of Companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

207. Assistant Official Receivers.—An assistant Official Receiver, appointed by the Board of Trade, shall be an officer of the Court, as fully as the Official Receiver to whom he is assistant, and subject to the directions of the Board of Trade, he may represent the Official Receiver in all proceedings in Court, or in any administrative or other matter, Judicial notice shall be taken of the appointment of an assistant Official Receiver, and he may be removed in the same manner as is provided in the case of an Official Receiver.

208. Power of Officers of Board of Trade and Official Receivers clerks in certain cases to act for Official Receivers.—In the absence of the Official Receiver any Officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

209. Duties where no assets.—Where a Company against which a winding-up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade.

210. Accounting by Official Receiver.—(1) Where a Liquidator is appointed by the Court in a winding-up by the Court, the Official Receiver shall account to the Liquidator.

(2) If the Liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

(3) The provisions of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is Liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

211. Official Receiver to act for Board of Trade where no committee of inspection.—Where there is no Committee of Inspection in a winding-up by the Court any functions of the Committee of Inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver.

NOTE.—As to the position under the 1948 Act with regard to a vacancy occurring in the committee of inspection, see section 253 (7), *ante*.

212. Appeals from Board of Trade and Official Receiver.—An Appeal in the High Court against a decision of the Board of Trade, or an Appeal to the Court from an act or decision of the Official Receiver acting otherwise than as Liquidator of a Company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made.

213. Applications under s. 196 and s. 277 (3) of the Act.—(1) An application by the Board of Trade to the Court to examine on oath the Liquidator or any other person pursuant to section 196 of the Act, or to confer on the Board or any person designated by the Board for the purpose with respect to the Company concerned the powers of investigating the affairs of the Company mentioned in sub-section (3) of section 277 of the Act, shall be made *ex parte*, and shall be supported by a report to the Court filed with the Registrar, stating the circumstances in which the application is made.

(2) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *prima facie* evidence of the statements therein contained.

NOTES.—Section 196. See now section 250, *ante*.

Section 277 (3). See now section 334 (3), *ante*.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS

214. Books to be kept by Officers of Courts.—(1) In the High Court the Registrar and in the District Registries of the High Court at Liverpool and Manchester respectively the District Registrars of the High Court, and in a Court other than the High Court, the Registrar shall keep books according to the Forms 101 and 102 in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2) The Officers of the Courts whose duty it is to keep the books prescribed by these Rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

GAZETTING IN A WINDING-UP BY THE COURT

215. Gazetteing Notices.—(1) All notices subsequent to the making by the Court of a winding-up order in pursuance of the Act or the Rules requiring publication in the *London Gazette* shall be gazetted by the Board of Trade.

(2) Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the Company's assets, or otherwise as the Board of Trade may direct.

NOTE.—The Form is No. 103 (notices for *London Gazette*).

216. Filing Memorandum of Gazette Notices.—(1) Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings the Official Receiver or Liquidator as the case may be shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a local paper, the Official Receiver or Liquidator as the case may be shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the Official Receiver or Liquidator as the case may be by the person who inserts the advertisement.

(4) A memorandum under this Rule shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

NOTE.—The Form is No. 104 (memorandum of advertisement or Gazetting).

ARRESTS AND COMMITMENTS

217. To whom warrants may be addressed.—A warrant of arrest or any other warrant issued under the provisions of the Act and Rules, may be addressed to such Officer of the Court, or to such High Bailiff or Officer of any County Court, whether such County Court has jurisdiction to wind up a Company or not, as the Court may in each case direct.

218. Prison to which person arrested on Warrant is to be taken.—Where the Court issues a warrant for the arrest of a person under any of the provisions of the Act or Rules, the prison (to be named in the warrant of arrest) to which the person shall be committed shall, unless the Court shall otherwise order, be the prison used by the Court in cases of orders of commitment made in the exercise by the Court of its ordinary jurisdiction.

219. Execution of Warrants of Arrest outside ordinary jurisdiction of Court.—Where a warrant for the arrest of a person has been issued by a Court other than the High Court under any of the provisions of the Act and Rules, the High Bailiff of the Court, or other Officer of the Court to whom the warrant is addressed, may send the warrant of arrest to the Registrar of any other Court (other than the High Court) within the ordinary jurisdiction or district of which such person shall then be or be believed to be, with a warrant endorsed thereon or annexed thereto under the seal of the Court from which the warrant originally issued, requiring execution, of the warrant by the Court to which it is so sent; and the Registrar of the last-mentioned Court shall seal or stamp the warrant with the seal of his Court, and issue the same to the High Bailiff or other proper Officer of his Court, with an endorsement, thereon in the Form 106; and thereupon such last-mentioned High Bailiff or Officer may, and shall in all respects execute the said warrant according to the requirements thereof, and all Constables and Peace Officers shall aid and assist within their respective districts in the execution of such warrant.

NOTE.—The form of warrant is Form No. 105.

220. Prison to which a person arrested is to be conveyed, and production and custody of persons arrested.—(1) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Act and Rules, other than sections 214 and 218 of the Act, and Rule 64 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the Court which originally issued the warrant of commitment, or otherwise by law.

(2) Where a person is arrested under a warrant, issued under section 214 or section 218 of the Act, or under Rule 64 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended; and the Governor or Keeper of such prison shall produce such person before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law: Provided that where any such person is conveyed to a prison other than

the prison used by the Court which originally issued the warrant in cases of orders of commitment made by such Court in the exercise of its ordinary jurisdiction, the Court may by order direct such person to be transferred to such last mentioned prison; and on receipt of such order the Governor or Keeper of the prison to which such person has been conveyed shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the Governor or Keeper of such last mentioned prison shall, on production of such Order and of the warrant of arrest, receive such person, and shall produce him before the Court, as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

NOTE.—Sections 214, 218. See now sections 268, 271, *ante*.

MISCELLANEOUS MATTERS

221. Board of Trade orders.—The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or the Rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's printers, and purport to be issued under the authority of the Board of Trade.

222. Enlargement or abridgment of time.—The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

223. Formal defect not to invalidate proceedings.—(1) No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment or election of an Official Receiver, Liquidator, or member of a Committee of Inspection shall vitiate any act done by him in good faith.

224. Application of existing procedure.—In all proceedings in or before the Court, or any Judge, Registrar or Officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made by the Act or Rules, the practice procedure and regulations shall unless the Court otherwise in any special case directs, in the High Court be in accordance with the Rules of the Supreme Court and practice of the High Court, and in a Palatine Court and County Court in accordance, as far as practicable, with the existing Rules and practice of the Court in proceedings for the administration of assets by the Court.

225. Petitions in Liverpool and Manchester District Registries.—The provisions of Rule 2 of the Rules of the Supreme Court, 1887 relating to petitions in the District Registries of Liverpool and Manchester, shall apply to petitions presented in those Registries under the Act and Rules.

226. Annulment.—The Companies (Winding-up) Rules, 1909, and all rules amending or supplementing the same and the forms thereby prescribed are hereby revoked and annulled, except so far as they relate to any winding-up which commenced before the first day of January, 1891, provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under any Rule or Order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said Rules and Orders shall be revived by reason of the revocation and annulment hereby effected.

227. Short title and commencement.—These Rules may be cited as the Companies (Winding-up) Rules, 1929. They shall come into operation on the 1st day of November, 1929.

APPENDIX

NOTE.—*The Appendix contains the Forms for use in connection with these Rules and as explained in the Note to Rule 3. The Forms are not reproduced here.*

APPENDIX V

THE COMPANIES (FORMS) ORDER, 1929

DATED OCTOBER 7, 1929, MADE BY THE BOARD OF TRADE UNDER THE COMPANIES ACT, 1929

S.R. & O. 1929, No. 823

The Board of Trade in pursuance of the powers conferred upon them by the Companies Act, 1929 (hereinafter called "the Act"), and of all other powers enabling them in that behalf hereby order as follows :—

1. Forms.—The forms set out in the Schedule hereto shall be used for the purposes of the Act and the particulars contained therein are hereby prescribed as the particulars required under the Act.

[1.—The Notice to be given by the Transferee Company pursuant to Section 155 to dissenting shareholders who hold Share Warrants to Bearer of the Transferor Company shall be in the Form No. 100 of the Companies (Forms) Order, 1929, with any necessary adaptations to meet the circumstances of the case and shall be given (a) in cases where the Articles of Association or Regulations of the Transferor Company provide that notice to such shareholders may be given by advertisement, by advertisement in the manner so provided and (b) in any other case in such manner as the Board of Trade may direct.]

NOTE.—The paragraph printed between square brackets was added by the Companies (Forms) No. 2 Order, 1929 (Amendment) Order, 1930, S.R. & O. 1930 No. 279, dated April 3, 1930, and made by the Board of Trade under the Companies Act, 1929, ss. 155, 380.

2. Certified copy of Charter, etc. under Section 344.—(i) A certified copy of the Charter, Statutes, or Memorandum and Articles of the Company, or other Instrument constituting or defining the constitution of the Company required to be delivered to the Registrar under Section 344 of the Act, in the case of a Company incorporated outside Great Britain in any of His Majesty's dominions or in any place under His Majesty's protection or where His Majesty has jurisdiction unless incorporated under the laws of a foreign country shall be deemed to be certified as a true copy if in such dominion or place it is—

- (a) duly certified as a true copy by an official of the Government to whose custody the original is committed ; or
- (b) duly certified as a true copy by a Notary Public of such dominion or place ; or
- (c) duly certified as a true copy on oath by some Officer of the Company before some person having authority to administer an oath as provided by Section 3 of the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10).

(ii) A certified copy of the Charter, Statutes or Memorandum and Articles of the Company or other Instrument constituting or defining the constitution of the Company required to be delivered to the Registrar under Section 344 of the Act in the case of a Company incorporated outside Great Britain under the laws of a foreign country shall be deemed to be certified as a true copy if in such foreign country it is—

- (a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British Officials mentioned in Section 6 of the Commissioners for Oaths Act, 1889 ; or
- (b) duly certified as a true copy by a Notary of such Foreign Country the certificate of the Notary being authenticated by any of the British Officials mentioned in Section 6 of the Commissioners for Oaths Act, 1889 ; or
- (c) duly certified as a true copy on oath by some officer of the Company before a person having authority to administer an oath as provided

by Section 3 of the Commissioners for Oaths Act, 1889, the status of the person administering the oath being authenticated by any of the British Officials mentioned in Section 6 of that Act.

NOTE.—*Companies Act*, 1929, s. 344. See now *Companies Act*, 1948, s. 407, *ante Commissioners for Oaths Act*, 1889. 8 Halsbury's Statutes 242.

3. Time for delivering particulars of alterations in documents, etc., under Section 346.—The time within which a return containing the particulars of alterations is to be delivered to the Registrar under Section 346 of the Act shall be twenty-one days after the date of making of such alterations or twenty-one days after the date on which notice thereof could in due course of post and if despatched with due diligence have been received in Great Britain.

NOTE.—*Companies Act*, 1929, s. 346. See now *Companies Act*, 1948, s. 409, *ante*.

4. Verified or certified copy of charge under Sections 79 and 81.—A copy of the instrument by which a charge is created or evidenced to be delivered to the Registrar under the provisions of Section 79 (3), Section 79 (5), and Section 81 (1) of the Act shall be verified or certified to be a true copy under the seal of the Company, or under the hand of some person interested therein otherwise than on behalf of the Company.

NOTE.—*Companies Act*, 1929, ss. 79, 81. See now *Companies Act*, 1948, ss. 95, 97.

5. Translations.—(i) A translation of a Charter, Statutes or Memorandum and Articles of Association or other instrument constituting or defining the constitution of a Company or any Account or Document to be delivered to the Registrar of Companies under the Act shall be certified to be a correct translation.

(a) if made in a foreign country by—

Any of the British officials mentioned in Section 6 of the Commissioners for Oaths Act, 1889, or by any person whom any such official certifies is known to him as competent to translate it into the English language ;

(b) if made outside the United Kingdom in any of His Majesty's dominions or in any place under His Majesty's protection or where His Majesty has jurisdiction by—

A person having authority to administer an oath as provided by Section 3 of the Commissioners for Oaths Act, 1889 ;

(c) if made in Northern Ireland by—

- (1) a Notary Public in Northern Ireland, or
- (2) a Solicitor of the Supreme Court of Judicature of Northern Ireland ;

(d) if made in Scotland by—

- (1) a Notary Public in Scotland, or
- (2) an Enrolled Law Agent ;

(e) if made in England by—

- (1) a Notary Public in England, or
- (2) a Solicitor of the Supreme Court of Judicature of England.

(ii) The Board of Trade may in any particular case, if they think fit to do so and upon such conditions as they think fit, permit certified copies or translations to be delivered to the Registrar, though not certified in accordance with the above requirements.

6. The Order and Regulations made by the Board of Trade dated the 29th day of March, 1909, the 1st day of November, 1918 (two), and the 26th day of March, 1919, and all Orders and Regulations amending or supplementing the same and the forms thereby prescribed are hereby revoked and annulled, provided that such revocation and annulment shall not prejudice or affect anything done before the 1st day of November, 1929, under any Order or Regulation which is hereby revoked and annulled.

7. This Order may be cited as The Companies (Forms) Order, 1929, and shall come into force on the 1st day of November, 1929.

THE COMPANIES (FORMS) No. 2 ORDER, 1929

DATED NOVEMBER 30, 1929, MADE BY THE BOARD OF TRADE UNDER THE
COMPANIES ACT, 1929, ss. 155, 380
(S.R. & O. 1929 No. 1103)

1. The notice to be given by the Transferee Company pursuant to Section 155 shall be in Form No. 100 of the Companies (Forms) Order, 1929, and shall be given to the said dissenting shareholder either personally or by sending it by registered post to him to his address registered in the books of the Transferor Company or (if he has no address within the United Kingdom so registered) to the address, if any, within the United Kingdom supplied by him to the Transferor Company for the giving of notice to him.

2. This Order may be cited as the Companies (Forms) No. 2 Order, 1929, and shall come into force on the signing hereof.

THE COMPANIES (FORMS) ORDER, 1948

MADE ON JULY 1, 1948, BY THE BOARD OF TRADE UNDER THE COMPANIES ACT, 1948
(S.I. 1948 No. 1518)

The Board of Trade in pursuance of the powers conferred on them by the Companies Act, 1948 (hereinafter called "the Act"), and of all other powers in that behalf enabling them hereby prescribe as follows :—

1. The Companies (Forms) Order, 1929, as amended (hereinafter called "the Principal Order"), shall have effect as if there were added to the Schedule thereto the forms set out in the Schedule to this Order.

2. The abstract showing receipts and payments required to be sent by a receiver to the registrar of companies and others in accordance with subsection (2) of section 372 of the Act shall be sent in the Form 57 set out in the Schedule to the Principal Order.

3. Forms Nos. 9, 39B, 44, 44A, 49, 54A, 90 and 131F set out in that Schedule shall cease to have effect.

4. This Order may be cited as the Companies (Forms) Order, 1948.

LIST OF FORMS

The following is a complete list of forms prescribed by the Companies (Forms) Order, 1929 (S.R. & O. 1929 No. 823) as amended by the Companies (Forms) No. 2 Order, 1929 (S.R. & O. 1929 No. 1103), the Companies (Forms) No. 2 Order, 1929 (Amendment) Order, 1930 (S.R. & O. 1930 No. 279) and the Companies (Forms) Order, 1948 (S.I. 1948 No. 1518) :—

*Number**Description*

- | | |
|-----|--|
| 4 | Notice of Situation of Registered Office or of any Change Therein. |
| 7 | Annual Return of a Company not having a Share Capital. |
| 9 | Particulars of Directors and Secretaries. |
| 9A | Notification of Change of Directors or Secretary or in their Particulars. |
| 10 | Notice of Increase in Nominal Capital. |
| 11 | Notice of Increase in Number of Members. |
| 14 | Consent to Take the Name of an Existing Company. |
| 15A | Members' Voluntary Winding-up. Return of Final Winding-up Meeting. |
| 15B | Creditors' Voluntary Winding-up. Return of the Final Winding-up Meetings of Members and Creditors. |
| 17 | Application by an Existing Company for Registration as a Limited Company. |
| 18 | Application by an Existing Company for Registration as an Unlimited Company. |
| 19 | Registration of an Existing Company. List of Members. |

*Number**Description*

- 21 Registration of an Existing Company as a Limited Company. Statement of Nominal Capital, its Division into Shares, the Number of Shares taken and Amount thereon, or the Amount of Stock of which it consists, also of the Name and Registered Office of the Company.
- 22 Registration of an Existing Company as a Limited Company. Copy Resolutions Assenting to Registration with Limited Liability.
- 23 Registration of an Existing Company. Declaration Verifying Documents delivered to the Registrar of Companies with application for Registration.
- 24 Statement of Places of Business of Banks.
- 28 Notice of Consolidation, Division, Sub-Division, or Conversion into Stock of Shares, specifying the Shares so Consolidated, Divided, Sub-Divided, or Converted into Stock, or of the Re-Conversion into Shares of Stock, specifying the Stock so Re-Converted, or of the Redemption of Redeemable Preference Shares or of the Cancellation of Shares (otherwise than in connection with a reduction of Share Capital under Section 55 of the Companies Act, 1929).
- 29 Notice of the Situation of the Office where a Dominion Register is kept or of any change in, or discontinuance of, any such Office.
- 39 Winding-up by the Court. Notice of Appointment of Liquidation.
- 39B Members' Voluntary Winding-up. Declaration of Solvency, embodying a Statement of Assets and Liabilities.
- 39C Members' Voluntary Winding-up. Notice of Appointment of Liquidation.
- 39D Creditors' Voluntary Winding-up. Notice of Appointment of Liquidation.
- 41 Declaration of Compliance with the Requirements of the Companies Act, 1929, on Application for Registration of a Company.
- 42 Consent to Act as Director of a Company.
- 43 List of the Persons who have Consented to be Directors of a Company.
- 44 Declaration that the Conditions of Section 109 (1) (a), (b) and (c) of the Companies Act, 1948, have been complied with.
- 44A Declaration that the Provisions of Section 109 (2) (b) of the Companies Act, 1948, have been complied with.
- 45 Return of Allotments.
- 47 Particulars of a Mortgage or Charge created by a Company Registered in England.
- 47A Particulars of a Series of Debentures containing, or giving by reference to any other Instrument, any Charge, to the Benefit of which the Debenture Holders of the said Series are entitled *pari passu*, created by a Company Registered in England.
- 47B Particulars of a Mortgage or Charge subject to which Property has been acquired on or after November 1st, 1929, by a Company Registered in England.
- 47C Certificate of Registration in Scotland or Northern Ireland of a Charge comprising Property situate there.
- 48 Particulars of an issue of Debentures in a Series by a Company Registered in England.
- 49 Declaration verifying Memorandum of Satisfaction of a Registered Mortgage or Charge.
- 49A Declaration verifying Memorandum relating to a Registered Mortgage or Charge.
- 49B Declaration verifying Memorandum relating to a Registered Mortgage or Charge.
- 52 Particulars of a Contract relating to Shares.
- 53 Notice of Appointment of a Receiver or Manager.
- 57 Receiver or Manager's Abstract of Receipts and Payments.
- 57a Notice of Ceasing to Act as Receiver or Manager.
- 58 Statement of the Amount or Rate per cent of the Commission payable in respect of Shares and of the Number of Shares which Persons have agreed for a Commission to Subscribe Absolutely.
- 1F List of Documents delivered for Registration by a Company Incorporated outside Great Britain.
- 2F List and Particulars of the Directors of a Company Incorporated outside Great Britain.
- 3F List of the Names and Addresses of Persons resident in Great Britain authorised to accept service on behalf of a Company Incorporated outside Great Britain.
- 4F Return of Alteration in the Charter, Statutes, Memorandum or Articles of Association or other Instrument constituting or defining the Constitution of a Company Incorporated outside Great Britain.
- 5F Return of Alteration in the List or Particulars of Directors of a Company Incorporated outside Great Britain.

<i>Number</i>	<i>Description</i>
6F	Return of Alteration in the Names or Addresses of the Persons resident in Great Britain authorised to accept service on behalf of a Company Incorporated outside Great Britain.
8F	Particulars of a Mortgage or Charge on Property in England created on or after November 1st, 1929, by a Company Incorporated outside England.
9F	Particulars of a Mortgage or Charge subject to which Property in England has been acquired on or after November 1st, 1929, by a Company Incorporated outside England.
10F	Particulars of a Series of Debentures containing, or giving by reference to any other Instrument, any Charge on Property in England to the benefit of which the Debenture Holders of the said Series are entitled, <i>pari passu</i> , created by a Company Incorporated outside England.
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